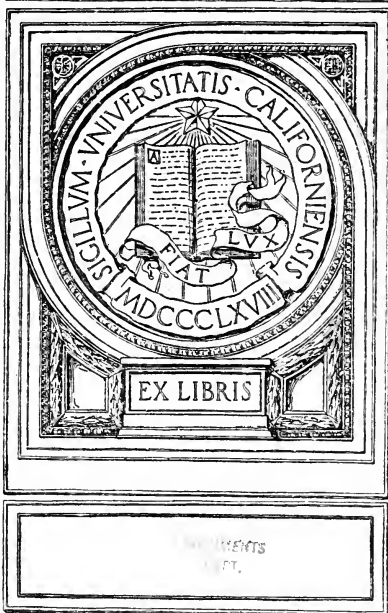




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EXCHANGE





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**DOCUMENTS**  
**OF THE**  
**Constitutional Convention**  
**OF THE**  
**STATE OF NEW YORK**  
**1915**

**Begun and Held at the Capitol in the City of Albany  
on Tuesday the Sixth Day of April**



**ALBANY**  
**J. B. LYON COMPANY, PRINTERS**  
**1915**

100-154  
DOCUMENTS  
DEPT.

TO VILL  
AMERICAN

100-154

# IN CONVENTION

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## DOCUMENT

No. 1

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### COMMITTEE ASSIGNMENTS

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1. **Bill of Rights** — Mr. Marshall, *Chairman*. Mr. Reeves, Mr. Oleott, Mr. Schurman, Mr. Vanderlyn, Mr. Bunce, Mr. Curran, Mr. Morgan J. O'Brien, Mr. Weed, Mr. F. Martin, Mr. O'Connor.

2. **The Legislature, its Organization, etc.** — Mr. Brackett, *Chairman*. Mr. M. Saxe, Mr. Quigg, Mr. Lindsay, Mr. Aiken, Mr. R. B. Smith, Mr. Ford, Mr. Kirby, Mr. Linde, Mr. Buxbaum, Mr. Dennis, Mr. Tierney, Mr. A. E. Smith, Mr. Ahearn, Mr. Haffen, Mr. Bernstein, Mr. Burkan.

3. **Legislative Powers** — Mr. Barnes, *Chairman*. Mr. Jesse Phillips, Mr. Schurman, Mr. Wadsworth, Mr. Brackett, Mr. Oleott, Mr. Tanner, Mr. Hinman, Mr. Bockes, Mr. Wheeler, Mr. Tuck, Mr. L. M. Martin, Mr. Sheehan, Mr. J. G. Saxe, Mr. Foley, Mr. A. E. Smith, Mr. Ahearn.

4. **Suffrage** — Mr. Cullinan, *Chairman*. Mr. Stowell, Mr. Waterman, Mr. Nye, Mr. Owen, Mr. Eggleston, Mr. C. J. White, Mr. Mealy, Mr. Baumes, Mr. R. E. Weber, Mr. Williams, Mr. J. G. Saxe, Mr. Dooling, Mr. Newburger, Mr. Frank, Mr. Eisner, Mr. Kirk.

5. **Governor and Other State Officers, etc.** — Mr. Tanner, *Chairman*. Mr. Rhees, Mr. E. N. Smith, Mr. Stimson, Mr. Cullinan,

Mr. Hale, Mr. Franchot, Mr. Bockes, Mr. C. Nicoll, Mr. Pelletreau, Mr. Angell, Mr. Bayes, Mr. Blauvelt, Mr. Dykman, Mr. Baldwin, Mr. F. Martin, Mr. Donnelly.

6. **Judiciary** — Mr. Wickersham, *Chairman*. Mr. Brackett, Mr. Marshall, Mr. Gladding, Mr. Stimson, Mr. Clearwater, Mr. Rodenbeck, Mr. Dunmore, Mr. Steinbrink, Mr. C. H. Young, Mr. Sears, Mr. Cobb, Mr. Delancey Nicoll, Mr. Stanchfield, Mr. Sheehan, Mr. Dykman, Mr. Wagner.

7. **On the State Finances, Revenues and Expenditures** — Mr. Stimson, *Chairman*. Mr. Hinman, Mr. Low, Mr. Pelletreau, Mr. Parsons, Mr. Lincoln, Mr. Lennox, Mr. Van Ness, Mr. Austin, Mr. Beach, Mr. Bannister, Mr. Dick, Mr. Wagner, Mr. Potter, Mr. Stanchfield, Mr. Delancey Nicoll, Mr. Slevin.

8. **Cities** — Mr. Low, *Chairman*. Mr. John Lord O'Brian, Mr. Berri, Mr. Fobes, Mr. E. N. Smith, Mr. Latson, Mr. Green, Mr. Wiggins, Mr. Franchot, Mr. V. M. Allen, Mr. Sanders, Mr. C. Nicoll, Mr. Foley, Mr. T. F. Smith, Mr. Baldwin, Mr. Weed, Mr. Shipman.

9. **Canals** — Mr. Clinton, *Chairman*. Mr. Cullinan, Mr. Landreth, Mr. Tuck, Mr. Lindsay, Mr. Wiggins, Mr. R. B. Smith, Mr. Green, Mr. Fogarty, Mr. Griffin, Mr. O'Connor.

10. **Public Utilities** — Mr. Hale, *Chairman*. Mr. Olcott, Mr. Westwood, Mr. Brenner, Mr. Mandeville, Mr. Deyo, Mr. Reeves, Mr. Nye, Mr. Sanders, Mr. Fancher, Mr. Kirby, Mr. Mathewson, Mr. McLean, Mr. Potter, Mr. Blauvelt, Mr. Foley, Mr. Dooling.

11. **Counties, Towns and Villages, their Organization, Government, etc.** — Mr. John Lord O'Brian, *Chairman*. Mr. Sharpe, Mr. Coles, Mr. F. L. Young, Mr. Quigg, Mr. Parmenter, Mr. Vanderlyn, Mr. Johnson, Mr. Heaton, Mr. Betts, Mr. Lincoln, Mr. L. M. Martin, Mr. Slevin, Mr. Donnelly, Mr. C. A. Webber, Mr. Schoonhut, Mr. Eppig.

12. **County, Town and Village Officers** — Mr. Mereness, *Chairman*. Mr. Tuck, Mr. Ryder, Mr. Rosch, Mr. Standart, Mr. Greff, Mr. Ford, Mr. Barrett, Mr. Linde, Mr. Parker, Mr. Buxbaum, Mr. Haffen, Mr. Daly, Mr. Wafer, Mr. Endres, Mr. Bernstein, Mr. J. J. White.

13. **Prisons, etc., and the Prevention and Punishment of Crime** — Mr. Clearwater, *Chairman*. Mr. Ostrander, Mr. McKinney, Mr. Owen, Mr. Bell, Mr. Winslow, Mr. Adams, Mr. Drummond, Mr. Leitner, Mr. Daly, Mr. Harowitz.

**14. Corporations** — Mr. Brenner, *Chairman*. Mr. Faucher, Mr. McKean, Mr. Wood, Mr. Doughty, Mr. Gladding, Mr. Bunce, Mr. Adams, Mr. Rosch, Mr. Jones, Mr. Williams, Mr. Law, Mr. Frank, Mr. Kirk, Mr. Mann, Mr. Donovan, Mr. Heyman.

**15. Banking and Insurance** — Mr. Fobes, *Chairman*. Mr. Beach, Mr. Jesse Phillips, Mr. Wheeler, Mr. Leggett, Mr. Van Ness, Mr. McKean, Mr. Richards, Mr. Mulry, Mr. Ryan, Mr. Harowitz.

**16. Militia and Military Affairs** — Mr. Latson, *Chairman*. Mr. Westwood, Mr. Dennis, Mr. Parker, Mr. McLean, Mr. Griffin, Mr. Byrne.

**17. Education** — Mr. Schurman, *Chairman*. Mr. Clearwater, Mr. Vanderlyn, Mr. Sargent, Mr. S. K. Phillips, Mr. Mandeville, Mr. Ryder, Mr. Mealy, Mr. Lennox, Mr. Law, Mr. Baumes, Mr. McKinney, Mr. Shipman, Mr. Potter, Mr. Ward, Mr. J. J. White, Mr. Donovan.

**18. Charities** — Mr. Wadsworth, *Chairman*. Mr. Stowell, Mr. Waterman, Mr. Parmenter, Mr. Johnson, Mr. Wiggins, Mr. Doughty, Mr. Wood, Mr. Sargent, Mr. Bell, Mr. F. C. Allen, Mr. Mulry, Mr. Leitner, Mr. Drummond, Mr. T. F. Smith, Mr. Newburger, Mr. Eisner.

**19. Industrial Interests and Relations** — Mr. Parsons, *Chairman*. Mr. Low, Mr. Curran, Mr. Berri, Mr. Parmenter, Mr. Frauchot, Mr. Mandeville, Mr. Eggleston, Mr. C. Nicoll, Mr. Jones, Mr. Leggett, Mr. R. E. Weber, Mr. O'Connor, Mr. A. E. Smith, Mr. Fogarty, Mr. Dahm, Mr. Unger.

**20. Conservation of Natural Resources** — Mr. Dow, *Chairman*. Mr. E. N. Smith, Mr. Clinton, Mr. Marshall, Mr. Whipple, Mr. Rhees, Mr. Landreth, Mr. Meigs, Mr. Austin, Mr. Bannister, Mr. Angell, Mr. Dunlap, Mr. Baldwin, Mr. Morgan J. O'Brien, Mr. Leary, Mr. Blauvelt, Mr. J. G. Saxe.

**21. Relations to the Indians** — Mr. Lindsay, *Chairman*. Mr. Whipple, Mr. Meigs, Mr. R. B. Smith, Mr. Shipman, Mr. Schoonhut, Mr. Endres.

**22. Future Amendments and Revisions of the Constitution** — Mr. Hinman, *Chairman*. Mr. F. L. Young, Mr. Sharpe, Mr. Heaton, Mr. C. J. White, Mr. F. Martin, Mr. Ward.

**23. Revision and Engrossment** — Mr. Rodenbeck, *Chairman*. Mr. Quigg, Mr. Ostrander, Mr. Betts, Mr. Bayes, Mr. Newburger, Mr. Leary.

**24. Privileges and Elections** — Mr. C. H. Young, *Chairman*. Mr. Brenner, Mr. Bunce, Mr. Cobb, Mr. Dunlap, Mr. F. C. Allen, Mr. Tierney, Mr. Richards, Mr. Burkan, Mr. Heyman, Mr. Byrne.

**25. Printing** — Mr. Berri, *Chairman*. Mr. Betts, Mr. Nixon, Mr. Mereness, Mr. Beach, Mr. McLean, Mr. Dahm.

**26. Contingent Expenses** — Mr. S. K. Phillips, *Chairman*. Mr. Fobes, Mr. Sears, Mr. Sharpe, Mr. Bell, Mr. Mulry, Mr. Dykman.

**27. Rules** — Mr. John Lord O'Brian, *Chairman*. Mr. Hale, Mr. Barnes, Mr. Parsons, Mr. Delancey Nicoll, Mr. Sheehan, Mr. Wagner.

**28. Civil Service** — Mr. Rhees, *Chairman*. Mr. S. K. Phillips, Mr. Wickersham, Mr. Dow, Mr. Dunmore, Mr. Deyo, Mr. Nixon, Mr. Dick, Mr. Coles, Mr. McKean, Mr. Aiken, Mr. Winslow, Mr. Weed, Mr. Richards, Mr. Unger, Mr. Eisner, Mr. Mann.

**29. Library and Information** — Mr. Jesse Phillips, *Chairman*. Mr. Wickersham, Mr. Rodenbeck, Mr. Wood, Mr. Morgan J. O'Brien, Mr. Stanchfield, Mr. Leitner.

**30. Taxation** — Mr. Martin Saxe, *Chairman*. Mr. Ostrander, Mr. Steinbrink, Mr. Greff, Mr. Nixon, Mr. McKinney, Mr. Leggett, Mr. Standart, Mr. Ryder, Mr. Barrett, Mr. Mathewson, Mr. V. M. Allen, Mr. Unger, Mr. Ryan, Mr. Eppig, Mr. C. A. Weber, Mr. Wafer.



# STATE OF NEW YORK .

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## IN CONVENTION

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### DOCUMENT

No. 2

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#### NAMES AND POST-OFFICE ADDRESSES OF DELEGATES TO CONSTITUTIONAL CONVENTION

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##### DELEGATES-AT-LARGE

Name	P. O. Address
Berri, William.....	465 Clinton Ave., Brooklyn.
Brackett, Edgar Truman.	Saratoga Spa, N. Y.
Brenner, Jacob.....	252 Carroll St., Brooklyn.
Clearwater, Alphonso P.	Kingston, N. Y.
Cullinan, Patrick W....	Oswego, N. Y.
Low, Seth.....	30 E. 64th St., New York City.
Marshall, Louis.....	47 E. 72d St., New York City.
O'Brian, John Lord....	Buffalo, N. Y.
Parsons, Herbert.....	115 E. 72d St., New York City.
Rodenbeck, Adolph J...	Rochester, N. Y.
Root, Elihu.....	1 E. 81st St., New York City.
Schurman, Jacob Gould..	Ithaca, N. Y.
Stimson, Henry L.....	275 Lexington Ave., New York City.
Wickersham, George W..	Cedarhurst, L. I.
Young, Charles H.....	New Rochelle, N. Y.

## DISTRICT DELEGATES

## FIRST SENATE DISTRICT

Name	P. O. Address
Pelletreau, Robert S....	Patchogue, N. Y.
Coles, Franklin A.....	Glen Cove, N. Y.
McKinney, William M...	Northport, N. Y.

## SECOND SENATE DISTRICT

Frank, Philip.....	Bridge Plaza, Long Island City.
Ryan, George J.....	236 Lincoln St., Flushing, L. I.
Weed, John W.....	61 Sanford Ave., Flushing, L. I.

## THIRD SENATE DISTRICT

McLean, Andrew.....	284 Carlton Ave., Brooklyn, N. Y.
Webber, Charles A.....	172 Congress St., Brooklyn, N. Y.
Wafer, Moses J.....	319 Clinton St., Brooklyn, N. Y.

## FOURTH SENATE DISTRICT

Adams, Floyd J.....	88 Ross St., Brooklyn, N. Y.
Weber, Richard E.....	46 Sumner Ave., Brooklyn, N. Y.
Buxbaum, Isidor.....	266 Van Buren St., Brooklyn, N. Y.

## FIFTH SENATE DISTRICT

Dahm, James H.....	462 55th St., Brooklyn, N. Y.
Byrne, Edward J.....	28 Eighth Ave., Brooklyn, N. Y.
Daly, Michael.....	312 Prospect Park West, Brooklyn, N. Y.

## SIXTH SENATE DISTRICT

Reeves, Alfred G.....	148 St. John's Place, Brooklyn, N. Y.
Steinbrink, Meier.....	18 Fuller Place, Brooklyn, N. Y.
Bannister, William P...	109 Cambridge Pl., Brooklyn, N. Y.

## SEVENTH SENATE DISTRICT

Fogarty, Michael.....	119 Russell St., Brooklyn, N. Y.
Ward, Francis P.....	436 Humboldt St., Brooklyn, N. Y.
Dykman, William N....	171 Washington Park, Brooklyn, N. Y.

## EIGHTH SENATE DISTRICT

Name	P. O. Address
Bayes, William R. . . . .	1551 East 10th St., Brooklyn, N. Y.
Latson, Almet R. . . . .	250 Jefferson Ave., Brooklyn, N. Y.
Doughty, Edgar M. . . . .	131 Lennox Row, Brooklyn, N. Y.

## NINTH SENATE DISTRICT

Eppig, Theodore C. . . . .	28 Linden St., Brooklyn, N. Y.
Mann, Frank. . . . .	62 Suydam St., Brooklyn, N. Y.
Heyman, Harry. . . . .	321 Lorimer St., Brooklyn, N. Y.

## TENTH SENATE DISTRICT

Sargent, Isaac. . . . .	914 Herkimer St., Brooklyn, N. Y.
Mathewson, William F. . . . .	41 Granite St., Brooklyn, N. Y.
Linde, Joseph. . . . .	226 Linden St., Brooklyn, N. Y.

## ELEVENTH SENATE DISTRICT

Ahearn, John F. . . . .	290 E. Broadway, New York City.
Smith, Alfred E. . . . .	25 Oliver St., New York City.
Harawitz, Abraham. . . . .	110 Forsyth St., New York City.

## TWELFTH SENATE DISTRICT

White, John J. . . . .	219 E. 12th St., New York City.
O'Brien, Morgan J. . . . .	729 Park Ave., New York City.
Newburger, Harry W. . . . .	17 Livingston Pl., New York City.

## THIRTEENTH SENATE DISTRICT

Drummond, Michael J. . . . .	435 Riverside Drive, New York City.
Stanchfield, John B. . . . .	Hotel Vanderbilt, New York City.
Baldwin, Arthur J. . . . .	35 Fifth Ave., New York City.

## FOURTEENTH SENATE DISTRICT

Foley, James A. . . . .	316 East 18th St., New York City.
Nicoll, Delancey. . . . .	23 East 39th St., New York City.
Kirk, Hiram M. . . . .	136 East 49th St., New York City.

## FIFTEENTH SENATE DISTRICT

Smith, Thomas F. . . . .	880 West End Ave., New York City.
Sheehan, William F. . . . .	16 East 56th St., New York City.
Mulry, Thomas M. . . . .	10 Perry St., New York City.

## SIXTEENTH SENATE DISTRICT

Name	P. O. Address
Wagner, Robert F. . . . .	244 East 86th St., New York City.
Dooling, John T. . . . .	179 East 80th St., New York City.
Saxe, John G. . . . .	166 West 72d St., New York City.

## SEVENTEENTH SENATE DISTRICT

Tanner, Frederiek C. . . .	12 Gramercy Park, New York City.
Nicoll, Courtlandt. . . . .	405 Park Ave., New York City.
Bell, Gordon Knox. . . . .	58 East 72d St., New York City.

## EIGHTEENTH SENATE DISTRICT

Eisner, Mark. . . . .	243 West 98th St., New York City.
Olcott, William M. K. . . .	58 West 84th St., New York City.
Saxe, Martin. . . . .	313 West 82d St., New York City.

## NINETEENTH SENATE DISTRICT

Shipman, Andrew J. . . .	636 West 158th St., New York City.
Bernstein, J. Sidney. . . .	1980 Seventh Ave., New York City.
Unger, Albert Blogg. . . .	139 West 130th St., New York City.

## TWENTIETH SENATE DISTRICT

Leary, Timothy A. . . . .	144 East 89th St., New York City.
Burkan, Nathan. . . . .	25 East 99th St., New York City.
Potter, Mark W. . . . .	417 Riverside Drive, New York City.

## TWENTY-FIRST SENATE DISTRICT

Donovan, Peter. . . . .	465 East 144th St., Bronx, New York City.
Donnelly, James F. . . . .	1432 Glover St., Bronx, New York City.
Slevin, William F. . . . .	30 East 130th St., New York City.

## TWENTY-SECOND SENATE DISTRICT

Martin, Francis. . . . .	2150 University Ave., Bronx, New York City.
Haffen, Louis J. . . . .	308 East 162d St., Bronx, New York City.
Griffin, Anthony J. . . . .	891 Cauldwell Ave., New York City.

### TWENTY-THIRD SENATE DISTRICT

Name	P. O. Address
Blauvelt, George A. . . . .	Monsey, N. Y.
Leitner, George A. . . . .	Nyack, N. Y.
Richards, Eugene Lamb.	Prospect Ave., New Brighton, N. Y.

### TWENTY-FOURTH SENATE DISTRICT

Winslow, Francis A. . . . .	Yonkers, N. Y.
Young, Frank L. . . . .	Ossining, N. Y.
Barrett, Henry R. . . . .	White Plains, N. Y.

### TWENTY-FIFTH SENATE DISTRICT

Paumes, Caleb H. . . . .	67 Farrington St., Newburgh, N. Y.
Wiggins, Russell. . . . .	Middletown, N. Y.
Rosch, Joseph. . . . .	Liberty, N. Y.

### TWENTY-SIXTH SENATE DISTRICT

Phillips, Samuel K. . . . .	Beacon, N. Y.
Ryder, Clayton. . . . .	Carman, N. Y.
Quigg, Lemuel E. . . . .	Austerlitz, N. Y.

### TWENTY-SEVENTH SENATE DISTRICT

Sharpe, Severyn B. . . . .	Albany Ave., Kingston, N. Y.
Vanderlyn, John N. . . . .	New Paltz, N. Y.
Austin, H. Leroy. . . . .	Catskill, N. Y.

### TWENTY-EIGHTH SENATE DISTRICT

Barnes, William. . . . .	Guilderland, N. Y.
Hinman, Harold J. . . . .	Albany, N. Y.
Mealy, Edward A. . . . .	Cohoes, N. Y.

### TWENTY-NINTH SENATE DISTRICT

Heaton, Willis E. . . . .	Hoosick Falls, N. Y.
Allen, Victor M. . . . .	Petersburgh, N. Y.
McKean, Andrew P. . . . .	Troy, N. Y.

## THIRTIETH SENATE DISTRICT

Name	P. O. Address
Law, Robert R.....	Cambridge, N. Y.
Ostrander, William S...	Schuylerville, N. Y.
Dennis, Otis A.....	Whitehall, N. Y.

## THIRTY-FIRST SENATE DISTRICT

Landreth, Olin Henry...	College Grounds, Schenectady.
Van Ness, Seward H...	Cobleskill, N. Y.
Danlap, W. Barlow.....	149 Market St., Amsterdam, N. Y.

## THIRTY-SECOND SENATE DISTRICT

Bunce, George H.....	Herkimer, N. Y.
Williams, Perry G.....	Lowville, N. Y.
Mereness, Charles S....	Lowville, N. Y.

## THIRTY-THIRD SENATE DISTRICT

Angell, Edward M.....	245 Glen St., Glens Falls, N. Y.
Owen, Harry E.....	Port Henry, N. Y.
Tierney, Patrick J.....	23 Conch St., Plattsburgh, N. Y.

## THIRTY-FOURTH SENATE DISTRICT

Meigs, Ferris J.....	Tupper Lake, N. Y.
Waterman, Robert S....	36 Green St., Ogdensburg, N. Y.
Hale, Ledyard P.....	Canton, N. Y.

## THIRTY-FIFTH SENATE DISTRICT

Smith, Edward N.....	162 Clinton St., Watertown, N. Y.
Stowell, Merrick.....	165 East 6th St., Oswego, N. Y.
Ford, Lewis H.....	Clayton, N. Y.

## THIRTY-SIXTH SENATE DISTRICT

Dunmore, Watson T....	75 Rutgers St., Utica, N. Y.
Martin, Louis M.....	Clinton, N. Y.
Beach, Samuel H.....	124 W. Dominick St., Rome, N. Y.

## THIRTY-SEVENTH SENATE DISTRICT

Boekes, George L.....	Oneonta, N. Y.
Gladдинг, Albert F....	Norwich, N. Y.
Lennox, Frank R.....	Chittenango, N. Y.

## THIRTY-EIGHTH SENATE DISTRICT

Name	P. O. Address
Fobes, Alan C.....	1237 James St., Syracuse, N. Y.
Smith, Ray B.....	1200 East Genesee St., Syracuse, N. Y.
Cobb, D. Raymond.....	109 College Pl., Syracuse, N. Y.

## THIRTY-NINTH SENATE DISTRICT

Green, George E.....	17 Frederick St., Binghamton, N. Y.
Deyo, Israel T.....	32 North St., Binghamton, N. Y.
Fancher, Samuel H.....	83 North St., Walton, N. Y.

## FORTIETH SENATE DISTRICT

Aiken, E. Clarence.....	Owasco, N. Y.
Eggleston, Joseph E....	Cortland, N. Y.
Allen, Francis C.....	Ovid, N. Y.

## FORTY-FIRST SENATE DISTRICT

Parker, John M.....	113 Front St., Owego, N. Y.
Mandeville, Hubert C...	509 West Church St., Elmira, N. Y.
Nye, Bertrand W.....	404 Madison Ave., Watkins, N. Y.

## FORTY-SECOND SENATE DISTRICT

Parmenter, John.....	Geneva, N. Y.
Johnson, John H.....	Penn Yan, N. Y.
Betts, Charles H.....	Lyons, N. Y.

## FORTY-THIRD SENATE DISTRICT

Phillips, Jesse S.....	36 Church St., Hornell, N. Y.
Wadsworth, James W., Sr.	Geneseo, N. Y.
Wheeler, Monroe.....	Bath, N. Y.

## FORTY-FOURTH SENATE DISTRICT

Leggett, John C.....	Cuba, N. Y.
Wood, Frank S.....	314 East Main St., Batavia, N. Y.
Greff, Clarence H.....	Warsaw, N. Y.

## FORTY-FIFTH SENATE DISTRICT

Name	P. O. Address
Rhees, Rush.....	University of Rochester, Rochester, N. Y.
Jones, Frank N.....	Webster, N. Y.
Tuck, Andrew E.....	203 Chamber of Commerce Building, Rochester, N. Y.

## FORTY-SIXTH SENATE DISTRICT

White, Charles J.....	Lockport, N. Y.
Curran, Richard H.....	City Hall, Rochester, N. Y.
Dick, Homer E. A.....	Wilder Building, Rochester, N. Y.

## FORTY-SEVENTH SENATE DISTRICT

Franchot, Edward E....	Niagara Falls, N. Y.
Lindsay, James P.....	North Tonawanda, N. Y.
Kirby, Thomas A.....	Albion, N. Y.

## FORTY-EIGHTH SENATE DISTRICT

Clinton, George, Sr....	Prudential Building, Buffalo, N. Y.
Lincoln, Leroy A.....	523 Ellicott Square, Buffalo, N. Y.
Sears, Charles B.....	810 Fidelity Building, Buffalo, N. Y.

## FORTY-NINTH SENATE DISTRICT

Endres, Mat.....	296 Strauss St., Buffalo, N. Y.
O'Connor, Thomas V...	157 Mackinaw St., Buffalo, N. Y.
Schoonhut, Charles.....	352 Williams St., Buffalo, N. Y.

## FIFTIETH SENATE DISTRICT

Standart, Frank W.....	303 Mutual Life Building, Buffalo.
Sanders, Harry D.....	633 Marine Bank Building, Buffalo.
Nixon, James L.....	339 Washington St., Buffalo.

## FIFTY-FIRST SENATE DISTRICT

Westwood, Herman J...	115 Central Ave., Fredonia, N. Y.
Dow, Charles M.....	72 Allen St., Jamestown, N. Y.
Whipple, James S.....	Salamanca, N. Y.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 3

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### RULES

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#### CHAPTER I

##### Powers and Duties of the President and Vice-Presidents

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both vice-presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of the committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

The President and Vice-Presidents shall be consulting members, without vote, in the several committees to which they shall not have been specifically appointed.

## CHAPTER II

### Order of Business

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts, in numerical order.

5. Reports of standing committees in the order stated in Rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from the Committee on Revision and Engrossment may be received under any order of business.

## CHAPTER III

### Rights and Duties of Members

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the

President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman. A report by a minority of any committee shall be signed by the members rendering the same.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any member may explain his vote, for not exceeding three minutes; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

## CHAPTER IV

### Order and Decorum

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V

### Order of Debate

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI

### Committees and Their Duties

Rule 15. The President shall appoint the following standing committees to report upon the subjects named and such others as may be referred to them, viz.:

1. On the bill of rights, to consist of eleven members.
2. On the Legislature, its organization, and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers, limitations and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On public utilities, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military affairs, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests and relations, except those already referred, to consist of seventeen members.

20. On the conservation of the natural resources of the State, to consist of seventeen members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.

26. Contingent expenses, to consist of seven members.

27. Rules, to consist of seven members, and the President.

28. On the civil service, to consist of eleven members.

29. On library and information.

30. On taxation, to consist of seventeen members.

Rule 16. The several committees shall consider and report, without unnecessary delay, upon the respective matters referred to them by the Convention.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the constitutional amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all constitutional amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the money appropriated by law.

## CHAPTER VII

### General Orders and Special Orders

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order, whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII

### Committee of the Whole

Rule 25. Any matter may be committed to the Committee of the whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken, nor a limit be made as to the number of times of speaking.



Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed constitutional amendment, the same shall be reported complete with any amendments made in the committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again.

## CHAPTER IX

### Proposed Amendments to the Constitution

Rule 30. No proposition for constitutional amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for constitutional amendment by districts, in numerical order.
2. By report of a committee.

Rule 31. The title of each proposition for constitutional amendment introduced shall state concisely its subject-matter. Matter which it is proposed to strike out shall be in brackets, and new matter shall be underscored and when printed shall be in italics. All proposed amendments shall be presented in duplicate.

Rule 32. All propositions for constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed constitutional amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee on their report is put.

Rule 34. No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed constitutional amendment shall be put upon third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed constitutional amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed constitutional amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed constitutional amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every pro-

posed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed constitutional amendment, after the reading of the title, and before the reading of the text, the proposed constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed Constitutional amendment, no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed constitutional amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed constitutional amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed constitutional amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed constitutional amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X

## Motions and Their Precedence

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions to, or for:

- |   |   |                                       |
|---|---|---------------------------------------|
| 1. Adjourn for the day.                                 | } | Not amendable or debatable.           |
| 2. Recess.  |   |                                       |
| 3. Call of the Convention.                              |   |                                       |
| 4. Previous question.                                   |   |                                       |
| 5. Lay on the table.                                    |   |                                       |
| 6. Postpone indefinitely, not amendable, but debatable. |   |                                       |
| 7. Postpone to a certain day.                           | } | Preclude debates on<br>main question. |
| 8. Go into Committee of the Whole.                      |   |                                       |
| 9. Commit to Committee of the Whole.                    |   |                                       |
| 10. Commit to a standing committee.                     |   |                                       |
| 11. Commit to a select committee.                       |   |                                       |
| 12. Amend.  |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions 1 to 11, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed constitutional amendment, which shall be

privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI

### Of Resolutions

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business:

1. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three legislative days.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses, for their report thereon before final action by the Convention.

## CHAPTER XII

### The Previous Question

Rule 53. The “previous question” shall be put as follows: “Shall the main question now be put?” and until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The “main question” shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII

### The Convention Chamber and Privileges of Admission to the Floor

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. Members of former Constitutional Conventions.
4. The members of the Senate and Assembly and ex-Speakers.
5. The State officers, deputies and commissioners.
6. The Regents of the University.
7. United States Senators and Congressmen.
8. The Capitol Commissioners.
9. Persons in the exercise of an official duty directly connected with the business of the Convention.
10. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All per-

mits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV

### General Rules

Rule 55. Equivalent motions, resolutions or amendments thereto, shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and, if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once, nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in

such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present shall take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of an amendment has been completed.



Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and any member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties, he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employees shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole and shall, at each day's session of the Convention, furnish a copy of the debates of the day before, written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Con-

stitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV

### Miscellaneous Provisions

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of the committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of Constitutional revision.

Rule 71. Six hundred copies of the Journal and six hundred copies of the reports as printed shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State Library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.

# IN CONVENTION

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## DOCUMENT

No. 4

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### REPORT OF THE STATE PRINTING BOARD

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*To the Constitutional Convention:*

GENTLEMEN.—Acting in accordance with your resolution dated April 7, 1915, authorizing the State Printing Board to execute a contract for the printing of the journals, documents and proceedings of the Constitutional Convention, pursuant to the recommendation of the Committee (of the Convention) on Printing, in their report made April 7, 1915, we, the undersigned, composing the State Printing Board, beg leave to report that, on the 22d day of April, 1915, we executed the contract with J. B. Lyon Company for the printing of the journals, documents and proceedings of the Convention recommended by said Committee, as required by said resolution; that said contract is in form as recommended by the report of said Committee and required by the said resolution of the Convention; that one duplicate original of said contract, executed by J. B. Lyon Company and by the State Printing Board, has been filed with the Comptroller of the State, endorsed with his approval, as required by section 16 of the Finance Law, and a duplicate original of said contract, as executed, is annexed hereto and submitted herewith, except that the exhibits appended thereto are copies of the originals of those attached to the contract filed with the Comptroller.

That, upon the execution of said contract, and bearing even date therewith, the said J. B. Lyon Company executed to the People of the State its bond in the penal sum of \$25,000, with the Fidelity and Deposit Company of Baltimore, Maryland, as surety, conditioned for the faithful performance of its said contract, which bond was approved by the Comptroller, as to form, by the Attorney-General, and the same has been filed with the Comptroller, as required by law.

All of which is respectfully submitted.

FRANCIS M. HUGO,

*Secretary of State.*

EUGENE M. TRAVIS,

*State Comptroller.*

EGBURT E. WOODBURY,

*Attorney-General.*

*Composing the State Printing Board.*

Dated April 23, 1915.

[COPY]

## ARTICLES OF AGREEMENT

Made this 22d day of April, 1915, by and between the PEOPLE OF THE STATE OF NEW YORK, by Francis M. Hugo, Secretary of State, Eugene M. Travis, State Comptroller, and Egbert E. Woodbury, Attorney-General, composing the Printing Board of the State of New York, pursuant to a resolution duly adopted on the 7th day of April, 1915, by the Convention to Revise the Constitution of the State of New York and Amend the same, assembled at Albany, commencing the 6th day of April, 1915, acting under and by virtue of an Act of the Legislature of the State of New York, being chapter 76 of the Laws of 1915, parties of the first part, and J. B. LYON COMPANY, of Albany, N. Y., party of the second part,

## WITNESSETH:

WHEREAS, The Secretary of State, the State Comptroller and the Attorney-General, constituting the Printing Board of the State of New York, have, in accordance with the provisions of said chapter 76 of the Laws of 1915, above referred to, and in accordance with the State Printing Law, being chapter 60 of the Laws of 1909, and acts amendatory thereof, given and caused to be duly published a notice, which is attached hereto and made a part hereof, that they, the said Secretary of State, State Comptroller and Attorney-General, as such Printing Board, would on Saturday, the 3d day of April, 1915, receive sealed proposals in writing for the printing of documents, journals and proceedings of said Convention to amend and revise the Constitution, as appears by the notice hereto attached; and

WHEREAS, Said party of the second part has, in accordance with the provisions of the above-mentioned acts and the terms of said notice, made and delivered to the Secretary of State, the State Comptroller and the Attorney-General, as such Printing Board, a sealed proposal in writing, which is also hereto attached and made a part hereof, to do and perform the public printing specified and named in said chapter 76 of the Laws of 1915, specified, named and described therein as the printing of documents, journals and proceedings of the Convention; and

WHEREAS, The said Printing Board has duly opened the said proposals received, pursuant to the said notice, and in accordance with the provisions of said chapter 76 of the Laws of 1915, has duly transmitted the said proposals to said Convention at its first session on the 6th day of April, 1915; and the said Printing Board having recommended to said Convention said proposal received from the party of the second part as the proposal the acceptance of which they consider most advantageous, and having furnished a blank form of contract, in accordance with such recommendation, for the use of the Convention, should it so determine; and

WHEREAS, The contract for the printing of the documents, journals and proceedings of said Convention has been duly awarded by said Convention to said party of the second part, in accordance with the provisions of chapter 76 of the Laws of 1915, and under the terms of said notice hereto attached, and the bid and proposal hereto attached, and the several covenants and agreements contained therein, and under the limitations aforesaid; and

WHEREAS, The State Printing Board has been authorized to execute this contract for the printing of the journals, documents and proceedings of the said Convention, pursuant to the recommendation of the Committee on Printing of said Convention, in its report made April 7, 1915, as appears from a true copy of the resolution of said Convention, duly adopted April 7, 1915, and from a true copy of said report of the Convention Committee on Printing, both of which are attached hereto and made a part hereof:

NOW, THEREFORE, THESE ARTICLES OF AGREEMENT WITNESSETH:

That said party of the second part will, at some suitable place in the State of New York, execute, perform and do with accuracy and dispatch all the printing and other work as provided for by this contract, in such quantities as the Convention, its duly designated committee or other proper authority thereof may require; and furnish all paper and other material required, and do all folding, collating, stitching, trimming, engraving, illustrating and binding provided for, and deliver the same at the time and in the manner and at a place or places, as hereinafter provided, and at and for the particular sum or sums and detailed

price or prices and upon the computation and conditions respectively referred to and set forth in said bid and proposal hereto annexed.

The party of the first part agrees to pay as consideration the prices for the work so agreed to be done and performed and materials furnished by the said party of the second part, the said sum or sums, price or prices, set opposite the respective detailed items and specifications in said annexed proposal, the said work and materials as aforesaid to be paid for by warrant drawn by the State Comptroller upon the Treasurer, upon vouchers signed by the President or Vice-President of the said Convention, and by the secretary or an assistant secretary designated by the secretary thereof for that duty, out of any moneys in the treasury appropriated for that purpose.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, That the said parties of the first part shall withhold from such payment or payments until the final and full completion of all work performed under this contract a sum which shall equal as near as may be 15 per cent. of said contract price.

AND IT IS FURTHER AGREED, That each page of documents, journals and proceedings shall be set in the same size of type, and the same weight and quality of paper shall be used as in the samples submitted by said Printing Board to the party of the second part, and which samples are attached hereto and made a part hereof.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, That all printing necessary to be done during the session or sessions of the Convention shall be properly and accurately executed and promptly delivered, and should the Convention at any time require any part of the work to be performed in extra haste, the work thus required shall be done without extra charge therefor; and upon complaint in writing by the Committee on Printing of said convention, that the party of the second part has failed to comply with this provision of the contract, it is agreed that said Convention, or its duly designated committee or other proper authority thereof, shall have power to make summary inquiry into the facts and circumstances of such failure, after notice to the party of the second part. If, after hearing all the parties, the said Convention, or a duly designated committee or other

proper authority thereof, is satisfied that the complaint is just and proper, and the interests of the State so require, said Convention, its duly designated committee or other proper authority thereof, may cause such printing to be continued elsewhere, at the best price obtainable therefor, having due regard to the character of the work and the time within which it is to be performed, and charge the excess, if any, over the contract price herein provided for, to said party of the second part; and such excess may be deducted from any money due or to become due to said party of the second part under this contract.

AND IT IS FURTHER UNDERSTOOD AND AGREED, That this contract includes cartage, delivery of books, blanks and other printed matter, at such times and places in the city of Albany as the Convention, its duly designated committee or other proper authority thereof may direct.

IT IS FURTHER UNDERSTOOD, That no extra pay will be allowed for corrections or alterations in proof sheets, and that in laying out said journals, documents and proceedings for binding, they shall be so printed that each volume shall contain not less than one thousand pages, unless with the written consent of the Convention, its duly designated committee or other proper authority thereof.

AND IT IS STILL FURTHER AGREED, That the said party of the second part shall not assign, transfer, convey, sublet or otherwise dispose of this contract or agreement, or of its right, title or interest therein, or its power to execute the same, to any other person, company or corporation, without the previous consent in writing of the said Convention, its duly designated committee or other proper authority thereof; and in respect thereto, said party of the second part agrees to comply with the provisions of section 43 of the State Finance Law.

AND IT IS HEREBY FURTHER STIPULATED AND AGREED, That no laborer, workman or mechanic in the employ of the said party of the second part, or in the employ of any sub-contractor, or person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted to work more than eight hours in any one calendar day, except in cases of extraordinary emergency, caused by fire, flood or danger to life or



property, and this contract shall be void and of no effect unless the party of the second part shall comply with the foregoing provisions.

IT IS FURTHER STIPULATED AND AGREED, That each laborer, workman or mechanic employed by the contractor, sub-contractor, or other person on, about or upon the work herein provided for, shall be paid not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the State where such work is carried on, and that this contract shall be void and of no effect unless the contractor shall comply with the foregoing provisions.

IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED, That said parties of the first part shall be at liberty and shall have the right at any time to revoke, abrogate, modify, cancel or annul this contract for failure to comply with, or non-performance of any of its provisions on the part of the party of the second part.

IN WITNESS WHEREOF, The Secretary of State, the State Comptroller and the Attorney-General, composing the Printing Board of the State of New York, have hereunto set their hands and seals, and the party of the second part has caused these articles of agreement to be signed by its vice-president, and its corporate seal to be hereunto affixed, attested by its secretary.

# THE PEOPLE OF THE STATE OF NEW YORK,

[L. S.]

By FRANCIS M. HUGO,  
*Secretary of State.*

[L. S.]

EUGENE M. TRAVIS,  
*State Comptroller.*

[L. S.]

EGBURT E. WOODBURY,  
*Attorney-General,*

Composing the State Printing Board, acting at the direction of the Convention to Revise the Constitution of the State of New York and amend the same.

J. B. LYON COMPANY,

[L. S.]

By CHARLES M. WINCHESTER,  
*Vice-President.*

ATTEST:

E. A. LEWIS,  
*Acting Secretary.*

[COPY]

## GENERAL—ALL COUNTIES.

[Five folios.]

## LAWS OF NEW YORK.—By Authority.

## Chap. 76.

AN ACT to further provide for the convention to revise the constitution and amend the same to convene on the first Tuesday of April, nineteen hundred and fifteen.

Became a law March 17, 1915, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The assembly chamber is hereby designated as the place in the capitol and twelve o'clock noon as the hour of the first Tuesday of April, nineteen hundred and fifteen, for the delegates elected to the convention to revise the constitution and amend the same, to convene.

§ 2. It shall be the duty of the secretary of state after calling the convention to order, to call the roll thereof and to administer the constitutional oath of office to the members.

§ 3. It shall be the duty of the comptroller to draw his warrants for the payment of delegates' services, and for the compensation, fixed by the convention, of officers, employees and assistants appointed by the convention, for the printing of its documents, journals and proceedings, and for such other expenses as shall be incurred by the convention, upon vouchers signed by the president or a vice president of the convention, and by the secretary of the convention, or an assistant secretary designated by the secretary for that duty, and the treasurer shall pay such warrants out of any moneys in the treasury appropriated for that purpose.

§ 4. It shall be the duty of the superintendent of public buildings to place at the use of the convention, its officers and committees, the assembly chamber and, so far as they may be required, such other rooms in the capitol as are ordinarily devoted to the uses of the legislative department.

§ 5. It shall be the duty of the printing board forthwith to give notice in accordance with the provisions of the state printing law, except as to time, that on Saturday, the third day of April, nineteen hundred and fifteen, they will receive sealed proposals for the printing of the documents, journals and proceedings of the convention. The printing board shall open the proposals received pursuant to such notice and shall transmit the same to the convention at its first session, together with a recommendation by the board as to the bid, the acceptance of which they consider most advantageous, and with a blank form of contract in accordance with such recommendation for the use of the convention should it so determine.

§ 6. This act shall take effect immediately.

STATE OF NEW YORK, }  
Office of the Secretary of State. } ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FRANCIS M. HUGO  
*Secretary of State*

[COPY]

## LEGAL NOTICES

## PROPOSALS FOR CONSTITUTIONAL CONVENTION PRINTING

Pursuant to Chapter 76, Laws of 1915, the undersigned, composing the State Printing Board, hereby give notice that they will receive sealed proposals Saturday, the 3d day of April, 1915, at the office of the State Comptroller, for executing the printing work provided to be done by said act, for the Constitutional Convention, including delivery.

It being expressly understood that such proposals for printing shall include all printing required to be done in pursuance of said act, including composition, paper, presswork, folding, collating, stitching and trimming of the Convention journals, documents, bills and all publications required to be done by said act.

Proposals must be made on blank forms, furnished on application to the State Printing Board.

Samples showing form and style of type and paper to be used may be obtained from the State Printing Board.

All such proceedings and journals and other printing or publications, copy of which shall be delivered to the printer in the afternoon of any day shall be delivered duly printed, folded, stitched and trimmed to the document room of the Convention between eight and nine o'clock in the forenoon of the next day.

To every bid there shall be annexed a satisfactory guaranty for the proper performance of the contract, by guarantor certified by the county judge of the county or a Supreme Court judge of the district where the guarantor resides, that said guarantor is a freeholder and able to make good his guaranty together with a certified check, cash or New York draft to the amount of ten thousand dollars.

Each proposal must be sealed up with the guaranty, and directed on the outside, *Proposal for Constitutional Convention Printing*, and when thus sealed and directed the proposition should be enclosed in a separate envelope and directed to the undersigned, or either of them, at the office of the State Comptroller at Albany, New York.

## CONVENTION BILLS OR OVERTURES

Composition, presswork, paper, etc., 500 copies of each four page signature, per page . . . . . Each additional 100 copies, per page —.

## CONVENTION CALENDARS

Composition, presswork, paper, etc., 500 copies of each four page signature, per page —. Each additional 100 copies, per page —.

## DOCUMENTS, JOURNALS, ETC.

Composition, presswork, paper, etc., 500 copies of each eight page signature, plain matter, per page —; rule and figure matter, per page —. Each additional 100 copies, plain matter, per page —; rule and figure matter, per page —.

## CONVENTION PROCEEDINGS

Composition, presswork, paper, etc., 500 copies of each eight page signature, per page —. Each additional 100 copies, per page —.

## BINDING JOURNALS, DOCUMENTS, ETC.

Binding in paper covers, per copy —. Binding in cloth covers, per copy —.

No extra pay will be allowed for corrections or alterations in proof sheets, nor will any additional work other than called for herein be permitted unless approved by the State Printing Board.

It is further expressly understood that the contract to be entered into as aforesaid shall contain the stipulation prescribed in section 3 of the Labor Law, that no laborer, workman or mechanic in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall be permitted or required to work more than eight hours in any one calendar day, except in cases of extraordinary emergency, caused by fire or flood or danger to life or property.

The Board reserves the right to reject any or all bids.

Dated, Albany, N. Y., March 24, 1915.

FRANCIS M. HUGO,

*Secretary of State.*

EUGENE M. TRAVIS,

*Comptroller.*

EGBURT E. WOODBURY,

*Attorney-General.*

[COPY]

STATE PRINTING BOARD  
COMPTROLLER'S OFFICEALBANY, N. Y., *April 6, 1915**To the Constitutional Convention:*

GENTLEMEN.—Pursuant to the provisions of chapter 76 of the Laws of 1915 we transmit herewith proposals, which we have opened, received in accordance with said statute for the printing of the documents, journals and proceedings of the Convention.

As directed by the statute, we respectfully recommend that the bid, the acceptance of which we consider most advantageous, is that of the J. B. Lyon Company.

In accordance with the statute, we respectfully submit herewith a blank form of contract with our recommendation, for the use of the Convention should it so determine.

All of which is respectfully submitted.

FRANCIS M. HUGO,  
*Secretary of State,*  
EUGENE M. TRAVIS,  
*State Comptroller,*  
EGBURT E. WOODBURY,  
*Attorney-General,*

Composing the Printing Board of the State of New York.

[COPY]

STATE PRINTING BOARD  
COMPTROLLER'S OFFICEALBANY, N. Y., *April 6, 1915**To the Honorable Constitutional Convention of the State of New York:*

GENTLEMEN.—Acting under and by direction of chapter 76 of the Laws of 1915, this Board received sealed proposals for printing at the office of the State Comptroller, Saturday, April 3, 1915.

These were opened by the Board at 12 o'clock noon, of that day. Attached herewith are the bids for the work.

As directed by the statute, the Board recommends that the contract be awarded to J. B. Lyon Company of Albany, N. Y., their proposal being most advantageous to the State.

Taking the work performed in 1894 as a basis, the estimated number of proceedings printed approximates 3,800 pages, size of our sample. The result on proposals received is as follows:

The Argus Company.....	\$16,720 25
Brandow Printing Company.....	9,234 00
J. B. Lyon Company.....	7,790 00

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The bills and calendars totaled three volumes each, 1,000 copies of each being ordered; therefore the result per 1,000 copies is per page:

*Bills*

The Argus Company.....	\$2 85
Brandow Printing Company.....	1 80
J. B. Lyon Company.....	1 55

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*Calendars*

The Argus Company .....	\$4 47
Brandow Printing Company .....	3 62
J. B. Lyon Company .....	3 00

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The documents and journals approximate 4 volumes of 1,000 copies, therefore the result per 1,000 copies is as follows per page:

*Plain*

The Argus Company .....	\$3 65
Brandow Printing Company .....	1 78
J. B. Lyon Company .....	1 70

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*Rule and Figure*

The Argus Company .....	\$3 45
Brandow Printing Company .....	2 81
J. B. Lyon Company .....	3 00

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While the Brandow Printing Company are a trifle lower than the J. B. Lyon Company on the rule and figure composition, there is so little of this work in connection with the whole proposition that the result would not be material.

#### BINDING

In regard to binding, the Brandow Printing Company bid is the same as the J. B. Lyon Company on paper covers and one cent lower than the J. B. Lyon Company on cloth binding. The lower price on the other work in our opinion more than offsets the difference.

On examination of the volumes in the library we find the manual, the annotated constitution, the subject index digest and the statistical volume, all of which were a part of the convention work in 1894. We are informed that this work is already ordered and partly completed under the direction of the Constitutional Convention Commission. The major portion of the work therefore will consist of journals and proceedings, for which the J. B. Lyon Company proposal is the most favorable.

Undoubtedly the journals and proceedings will be revised and indexed after the Convention as was the case in 1894 and the price per page would govern rather than the price per extra copies.

Respectfully submitted,

FRANCIS M. HUGO,  
*Secretary of State.*

EUGENE M. TRAVIS,  
*Comptroller.*

EGBURT E. WOODBURY,  
*Attorney-General,*

Composing the Printing Board of the State of New York.

[COPY]

Mr. Berri, from the Committee on Printing, submitted the following report.

*To the Constitutional Convention:*

The undersigned committee respectfully reports that it has carefully considered the report and recommendation of the State Printing Board, with the accompanying bids and papers submitted to it and recommends the acceptance of the bid of the J. B. Lyon Company. It also advises the execution of the contract prepared and recommended by the State Printing Board.

We further recommend that until further orders the number of copies to be printed shall be as follows: Of the Proceedings of the Convention seven hundred, of the Journals, Calendars, Documents and Proposed Constitutional Amendments, five hundred each.

Dated April 7, 1915.

(Signed)

WILLIAM BERRI,  
CHARLES H. BETTS,  
CHARLES J. MERENESS,  
JAMES H. DAHM,  
JAMES L. NIXON,  
SAMUEL H. BEACH.

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[COPY]

IN CONSTITUTIONAL CONVENTION,

ALBANY, N. Y., April 7, 1915

Mr. Berri offered for the consideration of the Convention a resolution in the words following:

*Resolved*, That the State Printing Board be and they are hereby authorized to execute a contract for the printing of the journals, documents and proceedings of the Convention pursuant to the recommendation of the Committee on Printing in their report made April 7, 1915.

Mr. President put the question whether the Convention would agree to said resolution and it was determined in the affirmative.



[Specimen Pages for Record]

**STATE OF NEW YORK**

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**IN CONVENTION**

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**RECORD****No. 133**

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**EVENING SESSION**

THURSDAY EVENING, SEPT. 20, 1894

The Constitutional Convention of the State of New York met pursuant to recess, in the Capitol, Albany, N. Y., Thursday, Sept. 20, at 8 p. m.

Second Vice-President Steele called the Convention to order.

Mr. Cookinham — Mr. President, I ask consent to offer two resolutions.

The President pro tem — The secretary will read the resolutions.

The secretary read the resolutions as follows:

Resolved, That a committee consisting of ten delegates be appointed by the President to draft an address to the people of the State, explanatory of the proposed constitutional amendments to be submitted to the popular vote, and that the President be ex officio chairman of such committee; also,

Resolved, That the Convention adjourn sine die on Saturday, September 22, at 12 o'clock noon, or as soon thereafter on that day as the Constitutional amendments then adopted can be read and the revised Constitution read, adopted as a whole, and signed by the delegates.

Mr. Cookinham — I ask that these resolutions lie on the table.

Mr. Moore — Mr. President, I desire to debate both of those resolutions.

Mr. Springweiler — Mr. President, I offer the following resolution:

The President pro tem — The secretary will read Mr. Springweiler's resolution.

The secretary read the resolution of Mr. Springweiler as follows:

Whereas, The wage-workers of this State have petitioned this Convention, through many thousand citizens, to pass the co-employe liability, anti-conspiracy and anti-trust amendments; therefore be it

Resolved, That this Convention will not adjourn without considering these requests and passing of said amendments.

Mr. I. Sam Johnson — Mr. President, a point of order. These resolutions refer to the business of this day and every other day, as the President of this Convention has often ruled, and I think we ought to consider them the moment they are put in here.

Mr. McMillan — Mr. President, I ask for a roll-call to ascertain whether there is a quorum or not.

The secretary called the roll, and it was announced that ninety-six members were present.

Mr. Tekulsky — Mr. President, I would like to offer the following resolution.

Mr. Spencer — I rise to a point of order. We are by a vote of the Convention in the order of third reading of bills, and as I understand it we cannot depart from that order of reading while there is any work before the Convention, without a vote of the Convention.

The President pro tem — The Chair will state that it has been the custom to allow a few moments for the ordinary business of the Convention at each session.

Mr. Spencer — But, Mr. President, some of these resolutions may call out debate and may consume the whole session.

The President pro tem — The resolutions giving rise to debate go over, and, therefore, they cannot call out discussion.

The secretary read Mr. Tekulsky's resolution as follows:

Resolved. That we extend this evening session to eleven o'clock, and after disposing of the printed calendar on third reading of bills numbers 26, 27, 28 and 29 we return to general order number 48, which is the first on the calendar, before transacting any other business.

The President pro tem — This resolution is strictly in order at this time.

Mr. Tekulsky — Mr. President, I desire that the Convention shall understand the reasons why I offer this resolution. Last week Mr. Hedges offered a resolution that we adjourn on Saturday until Thursday next, and debate arose at the time in reference to the adjournment. The question was asked, and it was stated by Mr. Hedges and by Mr. Root and others, that the motion for adjournment was offered in good faith, that they intended to return here and transact the business that was before the house. They not only said they would transact that business, but they laid out a plan of action, naming certain bills which would be acted upon. They have not done that, but the leaders have entered into a contract or some scheme or other to protect the thieves and gamblers of the State of New York; and when they reach that measure in reference to the gambling act, the gentleman then moves to go into the order of third reading. Now, Mr. President, I don't offer this for buncomb, I offer it in good faith. If the gentlemen, or any of the gamblers that he represents, can name me one man in the State of New York that is in the bookmaking business that is not a thief, a black-guard or an ex-convict, I will withdraw my resolution. I say, Mr. President, every bookmaker in the State of New York, no matter where he comes from, is nothing else but an ex-convict, a cracksman, a pick-pocket, a thief of the lowest character, and these men come here and desire to shut this out because the Legislature of a few years ago legalized a certain kind of gambling, and they are trying to protect them. Protect who? The king of the Louisiana lottery, Mr. Morris, the head of the association, who

[Specimen Pages for Journal]

**STATE OF NEW YORK**

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**IN CONVENTION**

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**JOURNAL****No. 9**

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ALBANY, N. Y., TUESDAY, JUNE 12, 1894

The Convention met pursuant to adjournment.

Prayer by Rev. A. K. Duff.

The journal of Friday, June eighth, was read and approved.

Mr. Barhite offered a resolution in words following:

Whereas, This Convention has learned of the death, after a long and painful illness, of Mrs. Lewis, wife of the Hon. Merton E. Lewis, Delegate from the twenty-eighth Senatorial district; now, therefore,

Resolved, That we tender to Mr. Lewis, in this hour of sorrow, our heartfelt sympathies; further

Resolved, That the secretary be directed to send to Mr. Lewis a copy of this resolution.

Mr. President put the question whether the Convention would agree to said resolution, and it was unanimously adopted by a rising vote.

Mr. President presented a number of memorials, asking that officers and employes of the State shall be selected upon merit.

Referred to the Committee on Legislature, its Powers and Duties.

Mr. Carter presented the memorial of the Women's Christian Temperance Union, of Erie county, asking the extension of female suffrage.

Referred to the Committee on Suffrage.

Mr. Barhite presented a memorial, asking that State employes be selected upon merit.

Referred to the Committee on Legislature, its Powers and Duties.

Mr. McMillan (by request) presented two memorials on the same subject.

Referred to the Committee on Legislature, its Powers and Duties.

Mr. Goodelle presented a memorial on the same subject.

Referred to the Committee on Cities.

Mr. Francis presented four petitions, asking for State inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Tucker presented the petition of citizens of New York city, in favor of female suffrage.

Referred to the Committee on Suffrage.

Also, a petition from the National Christian League for the promotion of social purity, on the same subject.

Referred to the Committee on Suffrage.

Mr. W. H. Steele presented the memorial and petition of the Oswego Baptist Association, against sectarian appropriations.

Referred to the Committee on Charities.

Mr. Hedges presented a petition, asking State inspection of certain religious institutions.

Referred to the Committee on Charities.

Mr. Countryman presented the protest of citizens of Albany against female suffrage.

Referred to the Committee on Suffrage.

Mr. Hill presented the petition of citizens of Erie county, in favor of woman suffrage.

Referred to the Committee on Suffrage.

Mr. Blake offered a resolution in words following:

Resolved, That the Secretary of State be and he hereby is directed to report to this Convention, on or before the 25th day of June, 1894, the number of indictments for murder in the first and second degrees found by grand juries of the various counties in this State, from January 1, 1889, to January 1, 1894, and the number of convictions of each degree had upon such indictments, including pleas of murder in the second degree.

Referred to the Committee on Judiciary.

[Specimen Pages for Documents]

## STATE OF NEW YORK

## IN CONVENTION

## DOCUMENT

No. 9

## RULES

## CHAPTER I

## POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS

Rule 1. The president shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of

the chair during the absence or inability of both vice-presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into committee of the whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the president.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be ex officio member and chairman of the committee on rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the first vice-president, or, if he also be absent, upon the second vice-president.

[Specimen Pages for Proposed Amendments]

**STATE OF NEW YORK**

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**No. 461**

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**IN CONVENTION**April 6, 1915

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Introduced by Mr. J. JOHNSON as a substitute for sections five and six of general order number thirteen, printed number four hundred and fifty-one. Ordered printed and laid on the table.

**PROPOSED CONSTITUTIONAL AMENDMENT**

To amend article eight of the constitution by the addition of  
new section

*The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:*

- 1 Section —. All cities are classified according to the latest state  
2 enumeration, as from time to time made, as follows: The first  
3 class includes all cities having a population of two hundred and  
4 fifty thousand, or more; the second class, all cities having a popu-  
6 lation of fifty thousand and less than two hundred and fifty  
6 thousand; the third class, all other cities. Laws relating to the  
7 property, affairs or government of cities, and the several depart-  
8 ments thereof, are divided into general and special city laws;  
9 general city laws are those which relate to all the cities of one or  
10 more classes; special city laws are those which relate to a single  
11 city, or to less than all the cities of a class. Special city laws

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NOTE — These lines are twelve point spaced in original.

1 shall not be passed except in conformity with the provisions of  
2 this section. After any bill for a special city law, relating to a  
3 city, has been passed by both branches of the legislature, the  
4 house in which it originated shall immediately transmit a cer-  
5 tified copy thereof to the mayor of such city, and within fifteen  
6 days thereafter the mayor shall return such bill to the house from  
7 which it was sent, with his certificate thereon, stating whether  
8 the city has or has not accepted the same.

9 In every city of the first class, the mayor, and in every other  
10 city, the mayor and the legislative body thereof, concurrently,  
11 shall act for such city as to such bill; but the legislature may  
12 provide for the concurrence of the legislative body in cities of the  
13 first class. The legislature shall provide for a public notice and  
14 opportunity for a public hearing concerning any such bill in  
15 every city to which it relates, before action thereon. Such a bill,  
16 if it relates to more than one city, shall be transmitted to the  
17 mayor of each city to which it relates, and shall not be deemed  
18 accepted, unless accepted, as here provided, by every such city.  
19 Whenever any such bill is accepted, as herein provided, it shall  
20 be subject, as are other bills, to the action of the governor.  
21 Whenever any such bill is returned without the acceptance of the  
22 city or cities to which it relates, or is not returned within such  
23 fifteen days, it may, nevertheless, again be passed by both  
24 branches of the legislature, and it shall then be subject, as are  
25 other bills, to the action of the governor. In every special city  
26 law which has been accepted by the city or cities to which it



[Specimen Pages for Calendar]

## STATE OF NEW YORK

## IN CONVENTION

## DAILY CALENDAR

No. 20

THURSDAY, AUGUST 16, 1894

## UNFINISHED BUSINESS ON GENERAL ORDERS

G. O. No.	Printed No.	Int. No.	By whom Introduced	ABSTRACT OF TITLE	Action
2	406	99	Mr. Roche.....	To amend article 3, by the addition of a new section, prohibiting the granting pensions to any civil officers or employes.	
6	364	9	Mr. Alvord.....	To amend section 7 of article 7, relating to "Salt Springs."	
4	381	183	Mr. Hill.....	To amend section 5 of article 2, relating to the manner of elections.	
3	11	11	Mr. McMillan....	To amend section 16 of article 3, relating to legislation.	
5	421	382	Special committee.	Relative to the transfer of land titles.	
7	64	64	Mr. Holls.....	To amend section 4 of article 2, relating to enforcing the duty of voting.	
14	378	49	Mr. Mereness....	To amend article 3, relating to public officers.	
13	409	369	Committee on Cities.	Relating to home rule for cities.	Recommitted to Committee retaining place on General Orders.
8	260	258	Mr. Lauterbach...	To amend article 2, relative to suffrage.	

[COPY]

FORM OF PROPOSAL FOR CONSTITUTIONAL CON-  
VENTION PRINTING

(Under Chapter 76, Laws of 1915.)

ALBANY, N. Y., April 9, 1915

*To the Honorable Secretary of State, Comptroller and Attorney-  
General:*

(Constituting the State Printing Board, State of New York.)

J. B. LYON COMPANY, Albany, N. Y.:

The undersigned propose to do the Constitutional Convention printing and work connected therewith for the State of New York, at the prices and on the conditions herein named, and agree to comply fully with the requirements of the State Printing Law, and in quantity, quality, and manner set forth, described and provided in the advertisement or notice calling for proposals for said printing, namely:

## CONVENTION BILLS OR OVERTURES

Composition, presswork, paper, etc., 500 copies of each four page signature, per page.....	\$1 05
Each additional 100 copies, per page.....	10

## CONVENTION CALENDARS

Composition, presswork, paper, etc., 500 copies of each four page signature, per page.....	2 50
Each additional 100 copies, per page.....	10

## DOCUMENTS, JOURNALS, ETC.

Composition, presswork, paper, etc., 500 copies of each eight page signature, plain matter, per page..	1 20
Rule and figure matter, per page.....	2 50
Each additional 100 copies, plain matter, per page..	10
Rule and figure matter, per page.....	10

## CONVENTION PROCEEDINGS

Composition, presswork, paper, etc., 500 copies of each eight page signature, per page.....	1 55
Each additional 100 copies, per page.....	10

## BINDING JOURNALS, DOCUMENTS, ETC

Binding in paper covers, per copy.....	\$0 01
Binding in cloth covers, per copy.....	13

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For engraving on stone, steel or wood, and printing maps, plans and illustrations for convention documents, the price to be paid, including cutting, folding and pasting the same, shall in no case exceed the lowest rates current for work of the desired quality in Albany and New York city at the time said work may be done. It is understood that no extra pay will be claimed or allowed for any corrections or alterations in proof sheets. And the right to abrogate or annul any contract made in pursuance hereof, for failure or nonperformance on the part of said person or firm, is hereby expressly reserved to the Secretary of State, Comptroller and Attorney-General.

J. B. LYON COMPANY,  
CHAS. M. WINCHESTER,  
*Vice-President.*

I hereby guarantee that if the foregoing bid for the Constitutional Convention printing is accepted that J. B. Lyon Company will enter into a contract in compliance with said proposals, give the necessary security, and make due and proper performance of said contract.

WM. LYON.

I certify that the above guarantor resides in the city of Albany, N. Y., is a freeholder, and able to make good his guaranty.

GEORGE ADDINGTON,  
*County Judge of the County of Albany.*

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NOTE—Under the provisions of Chapter 76, Laws of 1915, a certified check on some state or national bank or the money, to the amount of \$10,000, is required to accompany each bid.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 5

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#### **Proposed Resolution in Regard to Woman Suffrage, Introduced by Mr. Parsons and referred to the Committee on Suffrage**

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WHEREAS, There is to be submitted to the people at the general election in this year an amendment to section 1 of article II of the Constitution, which amendment provides for woman suffrage and reads as follows:

Section 1. Resolved (if the Assembly concur), That section one of article two of the constitution be amended to read as follows:

Section 1. Every [male] citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceeding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he *or she* may offer his *or her* vote, shall be entitled to vote at such election in the election district of which he *or she* shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, *provided that a citizen by marriage shall have been an inhabitant of the United States for five years; and provided that in time of war no elector in the*

actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his *or her* vote by reason of his *or her* absence from such election district; and the legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

AND WHEREAS, By virtue of section 3 of article XIV of the Constitution, any amendment proposed by this Convention relating to the same subject will if approved be deemed to supersede the foregoing amendment proposed by the Legislature and hence misunderstanding and confusion may arise,

NOW, THEREFORE, in order to avoid misunderstanding and confusion and to provide that if the people shall by a majority of the electors voting thereon approve and ratify said legislative amendment the same shall take effect, and that if they shall not approve and ratify the same woman suffrage shall not take effect, it is

*Resolved* (1), That the Convention do not submit any amendment relating to the subject of woman suffrage;

(2) That the Convention do not submit a complete section 1 of article II of the Constitution or any substitute therefor as part of a proposed revised Constitution; and

(3) That if the Convention shall submit any other amendment to said section 1 of article II it submit the same in such a manner that neither its approval and ratification by the people nor its failure of such approval and ratification shall affect the determinative effect of the aforesaid popular vote on the said legislative amendment.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

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No. 6

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#### REPORT OF THE CONSTITUTIONAL CONVENTION COMMISSION ON ITS WORK TO DATE

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MAY 19, 1915

*To the Delegates to the Constitutional Convention:*

GENTLEMEN.—The Constitutional Convention Commission, established by Laws of 1914, chapter 261, to collect, compile and print information and data for the Constitutional Convention of 1915, submits the following report on its work to date. The principal reason for making a report at this time is to give the delegates accurate and definite information as to the nature and scope of the material which is still to be supplied.

On November 30, 1914, the Commission sent a circular letter to all the delegates to the Constitutional Convention stating what at that time the Commission planned to supply. A copy of this circular letter is annexed to this report and made a part thereof.

#### PUBLICATION No. 1

The material which was to be contained in publication number 1 in the annexed circular letter, namely, the full text of all the constitutions of this State, is found in Volume I of Lincoln's Constitutional History, which has been supplied by this Commission to all delegates. This volume also contains the constitution

of the United States, Magna Charta, and other fundamental documents of a constitutional character.

### PUBLICATION NO. 2

Publication number 2, namely, the New York State Constitution Annotated, has been prepared in two parts. Part II, containing all the amendments to the constitution proposed in the Legislature from 1895 to 1914 inclusive, including those submitted to the people and adopted, those submitted to the people but rejected, and those not submitted to the people, was sent in an advance paper edition to all delegates on April 17, 1915. Attention is called to the fact that this part gives the vote on all amendments submitted to the people. Part I of this publication, containing the text of the existing constitution with notes, is off the press and is now being bound with Part II. The complete publication including both parts will be supplied to the delegates on Tuesday, May 25th. Each part is preceded by a prefatory note which fully explains its purpose and scope.

### PUBLICATION NO. 3

Publication number 3, a subject-index digest of all the 48 State constitutions, is being pushed through the press as rapidly as possible. The preparation of this publication was an ambitious undertaking and it has taken somewhat longer than the Commission anticipated. In order to make it available as soon as possible to the delegates, the Commission has arranged to have thirty sets of galley proofs arranged and classified by subjects and supplied to the Convention Committee on Library and Information to be used by that Committee in its discretion. The following subjects are covered by the galley proofs now available:

Auditor	Lieutenant-Governor
Attorney-General	Public Lands
Courts (in part)	Public Officers
Elections	Secretary of State
Eminent Domain	Taxation
Impeachment	Treasurer
Legislative Proceedings and Legislature	Waters



The other subjects indexed will be supplied to the Committee on Library and Information as the galleys come from the press. It is necessary to point out in this connection that these galleys have not been revised and there may be some mistakes in them. These will of course be corrected when the matter is put in page proof. It is believed that this volume will be of very great value to the delegates and much more useful than a reprint of all the State constitutions would have been.

#### PUBLICATION No. 4

The information referred to in item number 4 has been supplied in the publication entitled "Government of the State of New York; a description of its organization and functions."

#### PUBLICATION No. 5

Publication number 5, "The Revision of the State Constitution," being the printed proceedings of the annual meeting of the Academy of Political Science held in New York City November 19 and 20, 1914, has been supplied in two volumes.

#### PUBLICATION No. 6

The Commission has also supplied to the delegates the complete text of the New York State Constitution as amended and in force today in a publication with ample margins, wide spaces between lines and alternate blank pages. The form of this publication is designed to give every facility for indicating possible amendments and for making memoranda relating to matters under consideration.

The publications which will be supplied to the delegates in the near future include the following:

#### PUBLICATION No. 7

The Government of the City of New York. A collection of addresses and discussions presented at a series of conferences held under the auspices of the Academy of Political Science in the city of New York with the cooperation of the Bureau of Municipal Research, the Institute of Arts and Sciences of Columbia University, and a Citizens Committee, held during the period from April 7 to April 30, 1915. This volume contains 260 pages and

comprises articles by the heads of the leading departments of the city government, setting forth the problems of each particular department, what has been accomplished during the past two or three years, and a brief outline of the difficulties confronting any administration of the city's affairs. The subjects treated are the following:

- "The Office of Mayor," by John Purroy Mitchel.
- "Public Health and Sanitation," by S. S. Goldwater.  
Discussion by John J. Murphy, George O'Hanlon and Homer Folks.
- "Police Administration," by Arthur Woods.  
Discussion by Clement J. Driscoll.
- "Fire Administration," by Robert Adamson.  
Discussion by Clement J. Driscoll.
- "Charities and Correction," by Katherine B. Davis and John A. Kingsbury.  
Discussion by Edward T. Devine.
- "Education," by Thomas W. Churchill.  
Discussion by Clarence E. Meleney.
- "Parks and Recreation," by Cabot Ward and C. Ward Crampton.  
Discussion by Howard Bradstreet and W. B. Van Ingen.
- "Financial Administration, Budget and Tax Rate," by William A. Pendergast.  
Discussion by Thomas W. Lamont and E. R. A. Seligman.
- "Register's Office of New York County," by John J. Hopper.
- "Highways, Street Cleaning and Public Works," by Douglas Mathewson.  
Discussion by John T. Fetherston, Lewis H. Pounds and Marcus M. Marks.
- "The Administrative Organization of the Courts," by William McAdoo.  
Discussion by William L. Ransom and George W. Alger.
- "The City Charter," by George McAneny.  
Discussion by Thomas I. Parkinson and Richard S. Childs.
- "Transportation, Port and Terminal Facilities," by John Purroy Mitchel.  
Discussion by Richard C. Harrison and Edward M. Bassett.

This publication will be ready for the delegates May 25, 1915.

## PUBLICATION No. 8

Another publication now going through the press will contain material on county government and will include the following items:

I. Descriptive and statistical information relative to boards of supervisors and coroners supplied by the office of the State Comptroller in the form of tables. These tables will show:

*a.* The composition and representation of various boards of supervisors.

1. Number of members from cities and from towns in each board.

2. The average representation per supervisor in each county of area (square mile), property valuation (equalized valuation of the several counties of the State as fixed by the Equalization Commission) and the population (for county, by city supervisors, by town supervisors and for the largest and smallest town in each county).

*b.* Services performed by boards of supervisors in each county; the number of days of each session; the number of days for which supervisors were paid for session work; meeting of tax commissioners, and meeting of board of county canvassers; and total number of days' services paid for by each county.

*c.* Results of county financing by the boards of supervisors, as shown by reports of the treasurer of each county; the surplus or deficiency arising from the transactions of the county financed by and under the control of the boards of supervisors.

The above tables incidentally show:

1. The gross cost of general government, the items of revenue in reduction thereof and the net cost of the general government of each county.

2. The items and gross cost of improvements, including the interest on construction bonds; the items from sales, insurance recoveries, etc., properly applicable to the reduction of the costs of improvements, and the net cost of improvements.

3. The items and gross amount of indebtedness incurred and paid, and the net increase or decrease in the county debt.

4. The items and gross amount received as contributions for county government charges; the items and gross amount contributed by the county to the expenses of the State government and the government of other municipal subdivisions, and the net excess of the contributions received over the contributions made or vice versa.

5. The items and gross amount received by the treasurer from taxes; the items and gross amount expended by the treasurer in the collection thereof and in advances and refunds.

6. Minor items of advance made during the year and repaid on account of prior advances; deposits with the treasurer and deposits of previous years repaid; refunds on account of error.

7. Increase or decrease in cash balance arising from the transactions of the year with a distribution to the State funds; receipts from building bonds and temporary loans; receipts from highway bonds and loans; and receipts from the general county funds.

The tables show nothing in regard to the expenditures for general government, except the gross amount.

*d.* The cost of supervision of county finances in gross, per capita and by \$1,000 of valuation.

As an incident to these tables there will be shown:

1. The amount paid for supervisors' compensation distributed to salaries, per diem compensation, committee work, extending taxes, copying rolls and mileage.

2. The expense of the board of supervisors distributed to authorized clerks and employees, emergency employees, traveling expenses for committee work, stationery, postage and office incidentals, telephone and telegraph, furniture and fixtures for supervisors' chambers and special counsel.

3. Expenses for general administrative officers in certain counties performing duties elsewhere performed by boards of supervisors or their employees, distributed to county attorney, county auditor, county comptroller, purchasing agent and superintendent of buildings.

*e.* The character of the work of the board of supervisors, as shown by the cost to the county in gross, per

capita and by \$1,000 in valuation, for that portion of the county government exclusively under the financial control of the several boards.

The facts above will be shown under five class headings grouping counties in the order of their population.

II. A detailed statement by cities, villages and supervisory districts of all of the expenditures for public education for the school year 1913-14, supplied by the Department of Education. The expenditures are subdivided under the following headings:

Salaries

Superintendents

Principals

Teachers

Men

Women

Janitors, engineers, etc.

Libraries

Text-books, stationery and supplies

Compulsory attendance

School board and business offices

Transportation of pupils

New equipment (apparatus and furniture)

Repairing, hiring, insuring and improving school-houses, sites and outbuildings.

New buildings and schoolhouse sites

Fuel, water, light, power, janitor supplies and other expenses of operation

Bonded indebtedness

Principal

Interest

All other incidental expenses.

III. Papers read at the First Conference for Better County Government, held at Schenectady in November, 1914. These papers include the following:

"Some Needs to be Considered in Reconstructing County Government," by O. G. Cartwright, Director of the Westchester County Research Bureau.

"Administration of County Charities," by V. Everit Macy, Superintendent of the Poor, Westchester County.

"Taxation and County Government in New York State," by Henry J. Cookinham, County Attorney, Oneida County.

"The County Auditor," by Geo. S. Buck, Auditor, Erie County.

"The County Judiciary," by Herbert Harley, Secretary, American Judicature Society.

"The Sheriff and a State Constabulary," by Ernest Cawcroft, Deputy State Treasurer, Albany.

"The County Manager Plan," by Richard S. Childs, Secretary, The National Short Ballot Association.

"Schenectady's City-County Plan," by Benedict Hatmaker, Editor, The Schenectady "Union-Star."

IV. A survey furnished by the Westchester County Research Bureau of the lines of service which are recognized in the laws of New York State as within the field of the governmental functions exercised within counties by county officers, county departments or county councils, and included under the general term county government; followed by a condensed description of the governmental organization of the county of Westchester.

The above four publications will be included in one volume which is being pushed through the press as rapidly as possible.

#### PUBLICATION No. 9

A critical survey of the State government prepared under the direction of the Bureau of Municipal Research of New York City and based upon the "Government of the State of New York," the publication referred to in the first part of this report No. 4 which has already been supplied to delegates. This Commission believes that the delegates to the Constitutional Convention are entitled to all the light obtainable on the important problems before it and will transmit this critical survey to the delegates in the belief that the criticisms therein contained, unfavorable as well as favorable, will be of substantial assistance to the delegates in considering possible changes in the organization of the State government. This Commission does not, however, by transmitting this publication to the delegates necessarily endorse any of the suggestions therein contained.

## PUBLICATION No. 10

I. A report on the organization and functions of the government of the city of New York. This report will include:

a. Graphic charts of the organization of each department, bureau, etc.

b. Summaries and supporting schedules for each department, bureau, etc., showing.

1. Functions of each organization unit.
2. Titles of officers and employees.
3. Salary or other compensation of each employee.
4. Civil service classification of each employee.
5. Duties or activities of each employee.

This report is being prepared in cooperation with the city chamberlain, the commissioners of accounts and the department of finance.

II. A report in summary and in detail setting forth the revenues and expenditures of each department, bureau, etc., of the city of New York for each year from 1910 to 1914 inclusive. The revenues and expenses of the five counties embraced within the city of New York are also included.

This report is being prepared in cooperation with the department of finance and the commissioner of accounts.

III. A report on the organization and functions of the five counties within the city of New York, together with critical comment relative thereto. The organizations will be set forth similarly to those included in the report on New York City and the critical data will be in both summary and detailed form. This report is also being prepared in cooperation with the city chamberlain, the commissioner of accounts and the department of finance.

IV. A report on the organization and functions of Monroe county. This report will be prepared along the same lines as the reports noted above. The work is being done by the Bureau of Municipal Research.

V. A report on the organization and functions of the government of the city of Rochester, New York. This report is also of the same character as those noted above and is being prepared by the Bureau of Municipal Research. As Rochester is one of the three first class cities and is located in Monroe county, it should afford useful information to the convention when considered with the county report.

VI. A report on the organization and functions of Nassau county. This report is also similar to those above noted. It is being prepared for the Nassau county commission.

Respectfully yours,

MORGAN J. O'BRIEN, Chairman.

EDWARD SCHOENECK

THADDEUS C. SWEET

SAMSON LACHMAN

JOHN H. FINLEY

COPY OF CIRCULAR LETTER SENT TO DELEGATES TO THE CON-  
STITUTIONAL CONVENTION

ALBANY, N. Y., *November 30, 1914*

DEAR SIR.—The undersigned Commission, constituted by Laws of 1914, chapter 261, to collect, compile and print information and data for the use of the delegates to the Constitutional Convention of 1915, is desirous of obtaining suggestions as to the character and scope of the publications which should be prepared, printed and supplied primarily for the use of the delegates.

Our appropriation is limited to an amount insufficient to collect and furnish complete data on all the subjects that may be considered by the Convention and this makes it all the more desirable that we should have the advice and aid necessary to enable us to prepare only such publications as will unquestionably be useful in the study and consideration of the more important topics.

Owing to the short space of time in which the Commission has to do its work, and to the fact that work on some publications must be begun at once in order to have them ready before the Convention meets, the Commission has been obliged to make immediate provisions for certain publications. It is believed, however, that these are so fundamental in scope and character that there will be no dispute as to the propriety of publishing them. They are as follows:

1. The full text of all the Constitutions of this State, namely, the Constitutions of 1777, 1821, 1846; the Constitution proposed by the Constitutional Convention of 1867-68, but, with the exception of the judiciary article, rejected by the people; and the Constitution of 1894. The full text of the amendments to these Constitutions will be given, following the sections amended. It will be noticed that this publication will give the full text of every constitutional provision that has been in force in this State



at any time. This volume will probably also contain the Constitution of the United States and certain other documents which have been important in shaping the course of constitutional development in this State, as, for instance, Magna Charta and the Charter of Liberties and Privileges passed by the first New York Legislature, October 30, 1683. The Commission will be pleased to receive suggestion as to other important fundamental documents of this character.

2. The complete text of the existing New York State Constitution, annotated as follows:

(a) A source note for each section, showing when the section first became a part of the Constitution and what changes, if any, were subsequently made.

(b) An exact reference to the pages of the debates and proceedings of the State Constitutional Conventions where the subject-matter of the section has been discussed.

(c) An exact reference to the pages in Lincoln's Constitutional History of New York, published in five volumes in 1906, where this learned commentator has discussed the subject-matter of the section. Mr. Lincoln's work constitutes such an exhaustive study and exposition of constitutional development in this State, and contains such a wealth of information relating thereto, that the delegates will doubtless wish to refer to it on many occasions. The Commission believes that these annotations will very greatly facilitate its use. The Commission regrets that its available appropriation does not permit it to send a copy of this work to each delegate, but as many copies as possible will be procured for use during the Convention.

(d) The full text of any amendments to the section proposed by the Legislature since 1894 but not adopted.

3. A subject-index digest of all the State Constitutions. A subject classification, with main-heads and sub-heads, is being prepared, comprehensive enough in its scope to include within it an analysis of all the provisions in these State Constitutions. An exact reference by article and section will be given to each constitutional provision indexed, and the substance of the provision will be concisely stated. It will be noticed that this publication will not only be an index to all the State Constitutions, but will also serve the purpose of a comparative study of these Constitutions.

4. Certain statistics and descriptive statements covering the organization, work and salary expense of the various State depart-

ments. The Commission has already made tentative arrangements to secure a report which it believes will be of great value and usefulness to the delegates. Definite announcement of this report cannot, however, be made at this time.

It is hoped that arrangements can also be made to secure similar information and data covering at least some aspects of city and county government.

The Commission will be pleased to receive suggestions as to the specific kind of information and data along these lines which the delegates deem important for them to have.

5. The Commission has also arranged to secure a supply of the printed proceedings of the annual meeting of the Academy of Political Science held in New York city on November 19 and 20, 1914. This entire meeting was given up to the consideration of the subject, "The Revision of State Constitutions." The Commission believes that a perusal of the papers read at this meeting will throw valuable light on many of the important problems which will come before the Convention.

It is the intention of the Commission to place in the Convention hall, or in an adjoining room, so as to be readily accessible to delegates during the Convention period, many works bearing upon the political, social and constitutional development of this State, among which will be the publications on the inclosed list.

We shall be pleased to receive from you any suggestions covering the work of the Commission which you think will enable us to be of real and substantial service to the delegates.

Respectfully yours,

MORGAN J. O'BRIEN, Chairman  
ROBERT F. WAGNER  
THADDEUS C. SWEET  
SAMSON LACHMAN  
JOHN H. FINLEY

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 7

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#### SUPPLEMENTAL REPORT OF CONSTITUTIONAL CON- VENTION COMMISSION

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Referring to the report of the Constitutional Convention Commission, printed as Document No. 6 of the Constitutional Convention, this Commission begs to report that the publications described in that document and numbered 1, 4, 5 and 6, were sent to the home or office addresses of the delegates. If any of these publications have not been received it is because they have, in some way unknown to this Commission, miscarried.

Publications Nos. 2 and 7 are now in the document room of the Convention where the delegates can procure them at their convenience. Each delegate's copy bears his name stamped on the cover.

Publication No. 9 will be distributed in proof form to-day and bound copies will be ready for distribution early next week.

Every effort is being made to have the remaining publications (Nos. 3, 8 and 10) ready for distribution at the earliest possible moment. The greater part of these three publications (two of which are being prepared under special resolution of the Convention), is already in type.

Chapter 261 of the laws of 1914, which established this Com-

mission, after directing the distribution of the material to delegates, provides that "such commission may, in its discretion, provide for the circulation and distribution of such matter so far as practicable among other persons desiring the same and may fix a price therefor to be paid by persons other than delegates or state or municipal officers, which price shall be as nearly as possible the cost to the State of the material sold. \* \* \* Nothing herein contained, however, shall be deemed to prevent such commission from making such free distribution of such material as may be feasible."

Before making the distribution authorized under this act, the Commission wishes to satisfy fully the needs of all the delegates. It therefore requests each delegate to let the secretary of the Commission know, in writing, on or before June 4th, what publications, if any, he desires for his own use (describing the publications by the numbers given in document No. 6). After these reports have been received from the delegates the Commission will proceed on the assumption that the wants of the delegates have been complied with and will be at liberty to distribute the remaining copies in accordance with the directions contained in Chapter 261 of the laws of 1914. The copies for distribution by sale may be obtained from the Librarian, Dr. Charles R. Skinner, in the Legislative Library, to which place communications to Mr. Frederick D. Colson, Secretary of the Commission, may be addressed. It is necessary to point out that the Commission is not in a position to supply any additional sets of Lincoln's Constitutional History of New York except for the personal use of the delegates to the Convention or to the Convention Committee. It is further necessary to state that this Commission was able to secure only three hundred copies of publication No. 4, namely, the publication entitled "Government of the State of New York; a description of its organization and functions" and of these three hundred copies only about fifty remain for distribution.

Respectfully,

MORGAN J. O'BRIEN,  
*Chairman,*

JOHN H. FINLEY,  
SAMSON LACHMAN.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

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NO. 8

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#### REPLY OF THE CLERK OF THE COURT OF APPEALS TO RESOLUTION OF THE CONVENTION

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MAY 28, 1915

*To the Secretary of the Constitutional Convention:*

DEAR SIR.—I beg herewith to hand you the answers to the questions contained in the resolution of the Constitutional Convention transmitted to me on May 6, 1915. The information has been largely prepared by G. Herbert Cone, the law clerk of the Court.

Respectfully yours,

R. M. BARBER.

#### QUESTION 1

##### General Subject-Matter of Causes

(NOTE TO THIS QUESTION: In ascertaining the subject-matter of the cases, regard has been had, except in a few instances, to the general nature of the question involved, rather than to the form in which it arose. For instance, many questions of statutory construction and constitutional law are brought up by the writs of mandamus, certiorari and by other special proceedings, but as a rule no attention has been paid to the procedure in classifying the litigations. In a few instances, however, where the procedure and nature of the question were so closely interwoven that the procedure adopted would more readily identify the nature of the question, such as habeas corpus, quo

warranto, replevin, and perhaps in a few other instances, such cases have been thus classified.)

1913		1914	
NEGLIGENCE:		NEGLIGENCE:	
Master and servant.....	49	Master and servant.....	46
Personal injuries to third parties .....	38	Personal injuries to third parties .....	32
Same on streets and highways.....	10	Same on streets and highways.....	10
Damage to property.....	2	Damage to property.....	4
By automobiles .....	11	By automobiles .....	6
Total .....	110	Total .....	98
CRIMES .....		47	CRIMES .....
REAL PROPERTY:		REAL PROPERTY:	
Foreclosure .....	11	Foreclosure .....	15
Partition .....	7	Partition .....	4
Trespass .....	3	Trespass .....	7
Mortgages .....	5	Mortgages .....	2
Landlord and tenant.....	8	Landlord and tenant.....	10
Contracts for sale of.....	7	Contracts for sale of.....	10
General .....	21	General .....	24
Total .....	62	Total .....	72
CONTRACTS:		CONTRACTS:	
Purchase and sale.....	14	Purchase and sale.....	14
Municipal corporations .....	11	Municipal corporations .....	10
Negotiable instruments .....	16	Negotiable instruments .....	17
Partnership .....	8	Partnership .....	7
Bonds and undertakings.....	8	Bonds and undertakings.....	12
Insurance .....	13	Insurance .....	25
Personal services .....	5	Personal services .....	8
Broker's commissions .....	4	Broker's commissions .....	6
General .....	29	General .....	34
Total .....	108	Total .....	133
CONDEMNATION .....		24	CONDEMNATION .....
DECEDENTS' ESTATES .....		45	DECEDENTS' ESTATES .....
(Including accounting of representatives, probate and construction of wills, claims, etc.)			(Including accounting of representatives, probate and construction of wills, claims, etc.)
			53

## 1913

## TAXES:

General .....	9
Transfer .....	6
Franchise .....	2
Special franchise .....	6
Mortgage .....	2
Total .....	25

MATRIMONIAL ACTIONS .....	8
(Divorce, annulment and breach of promise.)	

## GOVERNMENTAL FUNCTIONS:

Positions in public service....	15
Change of grade.....	5
Liquor tax certificates.....	3
Court of Claims.....	4
Labor laws .....	4
Municipal and public rights and duties generally.....	15
Total .....	46

## TORTS:

Fraud and deceit.....	10
Conversion .....	2
Nuisance .....	3
Libel .....	5
Slander .....	1
Alienation of affections.....	2
Malicious prosecution .....	1
False imprisonment .....	2
Civil Rights Law.....	1
Unclassified .....	1
Total .....	28

PENALTIES .....	6
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STOCKHOLDERS' LIABILITY .....	3
STOCK BROKERS .....	4

## 1914

## TAXES:

General .....	14
Transfer .....	7
Franchise .....	5
Special franchise .....	3
Total .....	29

MATRIMONIAL ACTIONS .....	5
(Divorce and separation.)	

## GOVERNMENTAL FUNCTIONS:

Positions in public service....	21
Change of grade.....	5
Liquor tax certificates.....	6
Court of Claims.....	5
Municipal and public rights and duties generally.....	28
Total .....	65

## TORTS:

Fraud and deceit.....	2
Conversion .....	6
Nuisance .....	5
Libel .....	2
Civil Rights Law.....	3
Unclassified .....	1
Total .....	21

PENALTIES .....	3
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STOCKHOLDERS' LIABILITY .....	5
STOCK BROKERS .....	4

1913		1914	
BANKS AND BANKING.....	6	BANKS AND BANKING.....	7
<hr/>		<hr/>	
RAILROADS .....	8	RAILROADS .....	7
(Organizations, construction and operation.)		(Organization, construction and operation.)	
<hr/>		<hr/>	
CORPORATIONS:		CORPORATIONS:	
Dissolution .....	3	Dissolution .....	4
Stock and stockholders.....	6	Stock and stockholders.....	6
General matters .....	7	General matters .....	8
<hr/>		<hr/>	
Total .....	16	Total .....	18
<hr/>		<hr/>	
ATTORNEYS:		ATTORNEYS:	
Compensation .....	7	Compensation .....	8
Disbarment .....	1	Disbarment .....	3
<hr/>		<hr/>	
Total .....	8	Total .....	11
<hr/>		<hr/>	
CARRIERS .....	4	CARRIERS .....	7
<hr/>		<hr/>	
FERRY LICENSES .....	2		
<hr/>		<hr/>	
QUO WARRANTO .....	3	QUO WARRANTO .....	1
<hr/>		<hr/>	
HABEAS CORPUS .....	4	HABEAS CORPUS .....	3
<hr/>		<hr/>	
PROHIBITION, WRIT OF.....	1		
<hr/>		<hr/>	
ELECTIONS (POLITICAL) .....	3	ELECTIONS (POLITICAL) .....	9
<hr/>		<hr/>	
REPLEVIN .....	1	REPLEVIN .....	5
<hr/>		<hr/>	
ATTACHMENT .....	1		
<hr/>		<hr/>	
PATENTS .....	1		



1913		1914	
FRAUDULENT TRANSFERS .....	2	FRAUDULENT TRANSFERS .....	1
JUGDMENT CREDITOR'S ACTION...	1	JUGDMENT CREDITOR'S ACTION...	1
BANKRUPTCY .....	2	BANKRUPTCY .....	3
MECHANICS' LIENS .....	1	MECHANICS' LIENS .....	8
		Other liens .....	1
MEMBERSHIP ASSOCIATION .....	2	MEMBERSHIP ASSOCIATION .....	1
CONTEMPT .....	1	CONTEMPT .....	1
SUPPLEMENTARY PROCEEDINGS...	1		
EXECUTIONS .....	1		
FOREIGN JUDGMENTS .....	1		
GIFTS .....	1	GIFTS .....	1
		ARBITRATION .....	1
		INCOMPETENT PERSONS .....	1
TRADE-MARKS .....	1	TRADE-MARKS .....	1

(NOTE TO THE FOREGOING: There would perhaps be still greater uniformity shown in the work of the court were it not for the fact that during the year 1913 three weeks of the regular work was taken up with the impeachment trial. This will account for a slight falling off in the number of cases disposed of during 1913, as shown by the answer to Question XI. *post*, and in the number or kinds of questions presented as shown in the foregoing table.)

**QUESTION 2****Number of Cases Involving Questions of Constitutional Law**

1913	1914
18	32

**QUESTION 3****Number of Cases Involving the Interpretation of General Statutes of This State and of the United States**

1913	1914
182	203

(NOTE TO THE ABOVE: In calculating these cases, we have excluded the Statutes of Limitation and the Statutes of Fraud, and also the Codes, unless such statutes or a section of the Code was the actual and important question involved in the controversy, which was the situation in but a very small number of cases.)

**QUESTION 4****The Number of Cases Involving Questions of Criminal Law**

1913	1914
53	57

**QUESTION 5****The Number of Cases Involving the Interpretation of Municipal Charters**

1913	1914
39	63

(NOTE: The great majority of these cases arose over the construction of the Charter of Greater New York.)

**QUESTION 6****The Number of Cases Involving the Interpretation of Wills**

1913	1914
32	24

**QUESTION 7****The Number of Cases in Which Appeals Were Allowed by the Several Appellate Divisions, Pursuant to Section 190 of the Code of Civil Procedure, and that He State Separately the Number of Such Cases in Which Appeals Were so Taken Under Each Subdivision of Said Section**

1913	1914
34	36

**QUESTION 8**

**The Number of Cases in Which Appeals Were Allowed by the Several Appellate Divisions, Pursuant to Subdivision 2 of Section 191 of the Code of Civil Procedure, and that He State Separately the Number of Such Cases in Which Appeals Were so Taken Under Each Subdivision of Said Section**

1913		1914	
Subdivision 1 .....	4	Subdivision 1 .....	5
Subdivision 2 .....	7	Subdivision 2 .....	1

**QUESTION 9**

**The Number of Cases in Which Appeals Were Allowed by a Judge of the Court of Appeals, Pursuant to Subdivision 2 of Section 191 of the Code of Civil Procedure**

1913	1914
7	3

**QUESTION 10**

**The Number of Cases of Appeal Filed with the Court in Which the Decision of the Appellate Division Was Not Unanimous**

1913	1914
258	290

(NOTE: The above is not a computation from the "cases of appeal filed with the court" during 1913 and 1914, but from the cases argued during these years. That was the basis on which we proceeded in answering the other questions, and we have assumed that you wanted these figures given on a uniform basis.)

**QUESTION 11**

**Total Number of Cases on Appeal Which Had Been Placed upon the Calendar but Not Reached for Argument on the 1st of January for Each Year During the Past Five Years**

January 1, 1911 (calendar of 1909) .....	66
January 1, 1912 (calendar of 1910) .....	201
January 1, 1913 (calendar of 1912) .....	218
January 1, 1914 (calendar of 1913) .....	351
January 1, 1915 (calendar of 1914) .....	640

The foregoing figures are furnished in strict pursuance to the request of the Convention, but the clerk deems it proper to call attention to the fact that they are not significant inasmuch as the calendars are not made up with reference to January 1st at all.

The tables annexed will probably furnish the information which the Convention desires as to the work of the court.

Cases pending January 1, 1910.....	824
Returns on Appeal filed for the year 1911.....	763
Returns on Appeal filed for the year 1912.....	744
Returns on Appeal filed for the year 1913.....	774
Returns on Appeal filed for the year 1914.....	795
Returns on Appeal filed May 21, 1915.....	426

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Total Returns filed in five years, four months and twenty-one days .....	4,326
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Cases argued and dismissed:

For the year 1910.....	683
For the year 1911.....	696
For the year 1912.....	662
For the year 1913.....	635
For the year 1914.....	679
To May 21, 1915.....	349

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Total cases disposed of.....	3,704
Total number of Returns filed.....	4,326
Total number of cases disposed of.....	3,704

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Total number of cases now pending.....	622
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Respectfully submitted,

R. M. BARBER,

*Clerk of the Court of Appeals.*

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

**No. 9**

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#### REPLY OF THE STATE COMPTROLLER TO RESOLUTION OF THE CONVENTION

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STATE OF NEW YORK

COMPTROLLER'S OFFICE

ALBANY, *May 29, 1915*

HON. WILLIAM D. CUNNINGHAM, *Secretary, Constitutional Convention, Albany, N. Y.:*

DEAR SIR.— Enclosed please find specific tables showing salary and compensation received by the several county treasurers in this State during the last complete fiscal years of such counties. There are also shown in the tables the expenses of such offices to their respective counties. The information contained in these tables is taken from verified reports of county treasurers filed in this Department, with the exception of the counties of Erie, Monroe, Cortland, Essex, Seneca, Yates and Schuyler. For those seven counties the information has been gathered by this Department from reports of county treasurers to respective boards of super-

visors, supplemented in some instances by personal investigation and reports to other county officers. All of the information, however, has been gathered from reliable sources.

In a few counties either by special law or resolution of the Board of Supervisors the County Treasurer is required to pay for extra clerk hire out of the salary and compensation allowed him. In other counties such clerk hire is paid by the county in addition to the County Treasurer's salary. To make the table complete, therefore, we show the full cost of each county treasurer's office to his county.

The following statement summarizes the expenses of these offices throughout the entire State.

*Summarized Statement.*

The following statement summarizes the expenses of these offices for the State:

Salaries . . . . .	\$114,633 27
Fees:	
Liquor taxes . . . . .	\$30,929 21
Inheritance taxes . . . . .	32,438 69
Bank taxes . . . . .	9,195 10
State taxes . . . . .	7,302 14
Court and trust fund fees. . . . .	2,003 03
Returned tax fees. . . . .	3,340 25
	<hr/>
Total . . . . .	85,108 42
	<hr/>
Total treasurers' compensation. . . . .	\$199,841 69
Expenses for clerks and assistants. . . . .	107,739 32
Incidental office expenses. . . . .	46,003 00
	<hr/>
Total cost of offices. . . . .	\$353,584 41
	<hr/> <hr/>

Should you desire further information than is contained in these tables, I shall be very glad to furnish it within a reasonable time.

Respectfully yours,

EUGENE M. TRAVIS,

*Comptroller.*

COUNTY

SALARY AND COMPENSATION AND

CLASS <sup>1</sup>	Popula- tion	Salary received by treasurer	FEES RETAINED BY			
			Liquor taxes <sup>2</sup>	Inherit- ance taxes <sup>3</sup>	Pank taxes <sup>4</sup>	State taxes <sup>5</sup>
Class I .....	1,095,252	\$19,500 00			\$2,005 14	
Class II .....	650,397	19,875 00			1,096 42	\$1,236 26
Class III .....	1,297,143	33,624 97	\$11,617 74	\$11,189 05	1,644 20	3,308 40
Class IV .....	989,595	27,658 30	15,557 29	18,617 85	3,474 82	2,182 69
Class V .....	314,344	13,975 00	3,754 18	2,631 79	974 52	574 79
State .....	4,346,731	\$114,633 27	\$30,929 21	\$32,438 69	\$9,195 10	\$7,302 14

<sup>1</sup> Counties arranged in classes by population.<sup>2</sup> Liquor Tax Law, § 11.<sup>3</sup> Tax Law, § 237.<sup>4</sup> Tax Law, § 24. See opinion of Attorney-General, May 6, 1912.



## TREASURERS

## EXPENSES, FISCAL YEAR 1914

TREASURER		Total compensation of treasurer	Expenses for clerks and assistants	Incidental office expenses	Total cost of office to county	
Court and trust fund fees <sup>6</sup>	Returned tax fees <sup>7</sup>					
.....	.....	\$21,505 14	\$48,696 67	\$12,617 06	\$82,818 87	I
\$402 56	\$2,935 05	25,545 29	17,579 99	3,983 29	47,108 57	II
507 62	80 70	61,972 68	32,120 06	13,274 89	107,367 63	III
902 92	.....	68,393 87	7,788 55	13,099 37	89,281 79	IV
189 93	324 50	22,424 71	1,554 45	3,028 39	27,007 55	V
\$2,003 03	\$3,340 25	\$199,841 69	\$107,739 72	\$46,003 00	\$353,584 41	State

<sup>5</sup> Tax Law, § 91. See opinion of Attorney-General, May 6, 1912.

<sup>6</sup> Code Civil Procedure, § 3321. See opinion of Attorney-General, May 6, 1912.

<sup>7</sup> Special statutes for certain counties.

# COUNTY

## SALARY AND COMPENSATION AND

COUNTY	Popula- tion	Salary received by treasurer	FEES RETAINED BY			
			Liquor taxes	Inheri- tance taxes	Bank taxes	State taxes
CLASS						
1. Erie.....	528,985	\$5,000 00			\$2,005 14	
2. Monroe.....	283,212	4,500 00				
3. Westchester.....	283,055	10,000 00				
Totals.....	1,095,252	\$19,500 00			\$2,005 14	
CLASS						
1. Onondaga.....	200,298	\$4,000 00				
2. Albany.....	173,666	5,000 00			\$715 78	\$758 01
3. Oneida.....	154,157	4,875 00				
4. Rensselaer.....	122,276	6,000 00			380 64	478 25
Totals.....	650,397	\$19,875 00			\$1,096 42	\$1,236 26
CLASS						
1. Orange.....	116,001	\$3,958 33			\$363 30	
2. Chautauqua.....	105,126	3,500 00				
3. Suffolk.....	96,138	1,500 00	\$2,824 69		221 79	
4. Niagara.....	92,036	2,500 00				\$464 79
5. Ulster.....	91,769	2,500 00		\$7,401 89	233 49	
6. St. Lawrence.....	89,005	1,500 00	933 90	724 64	216 30	
7. Schenectady.....	88,235	1,999 98			61 80	386 67
8. Dutchess.....	87,661	3,750 00				366 68
9. Nassau.....	83,930	2,000 00	3,786 00			812 54
10. Steuben.....	83,362	3,500 00				284 46
11. Jefferson.....	80,382	1,000 00	*	578 82	159 00	298 80
12. Broome.....	78,809	2,500 00				287 02
13. Oswego.....	71,664	1,000 00	1,726 42	1,816 39	116 81	205 05
14. Cayuga.....	67,106	2,000 00	1,265 85	540 75		
15. Cattaraugus.....	65,919	416 66	1,080 88	126 56	271 71	202 39
Totals.....	1,297,143	\$33,624 97	\$11,617 74	\$11,189 05	\$1,644 20	\$3,308 40

<sup>1</sup> Approximate. Not reported by items.

<sup>2</sup> Counsel, \$1,172.32; shelving, \$1,704.00.

\* Not reported.

## TREASURERS

EXPENSES, FISCAL YEAR, 1914 *continued*

TREASURER		Total compensation of treasurer	Expenses for clerks and assistants	Incidental office expenses	Total cost of office to county	
Court and trust fund fees	Returned tax fees					
I						
.....	.....	\$7,005 14	\$29,785 26	\$5,323 50	\$42,113 90	1
.....	.....	4,500 00	10,328 50	3,354 48	18,182 98	2
.....	.....	10,000 00	8,582 91	3,939 08	22,521 99	3
.....	.....	\$21,505 14	\$48,696 67	\$12,617 06	\$82,818 87	
II						
.....	.....	\$4,000 00	\$5,580 00	\$732 15	\$10,312 15	1
\$328 68	\$2,592 40	9,394 87	5,799 99	651 71	15,846 57	2
.....	.....	4,875 00	2,000 00	304 21	7,179 21	3
73 88	342 65	7,275 42	14,200 00	2,295 22	13,770 64	4
\$402 56	\$2,935 05	\$25,545 29	\$17,579 99	\$3,983 29	\$47,108 57	
III						
.....	.....	\$4,321 63	\$800 00	\$180 12	\$5,301 75	1
.....	.....	3,500 00	.....	1,200 73	4,700 73	2
\$254 17	.....	4,800 65	6,186 25	4,385 63	15,372 53	3
.....	.....	2,964 79	1,650 00	1,575 49	6,190 28	4
*	.....	10,135 38	2,800 10	296 83	13,232 31	5
*	.....	3,374 84	300 00	222 52	3,897 36	6
*	\$16 00	2,464 45	3,656 21	622 85	6,743 51	7
172 99	.....	4,289 67	1,650 00	469 66	6,409 33	8
.....	.....	6,598 54	9,300 00	1,366 90	17,265 44	9
.....	.....	3,784 46	.....	834 83	4,619 29	10
*	*	2,036 62	500 00	136 74	2,673 36	11
*	.....	2,787 02	2,377 50	.....	5,164 52	12
*	.....	4,864 67	900 00	226 20	5,990 87	13
.....	.....	3,896 60	1,500 00	915 64	6,224 24	14
80 46	64 70	2,243 36	500 00	840 75	3,584 11	15
\$507 62	\$80 70	\$61,972 68	\$32,120 06	\$13,274 89	\$107,367 63	

## SALARY AND COMPENSATION AND

COUNTY	Popula- tion	Salary received by treasurer	FEES RETAINED BY			
			Liquor taxes	Inheri- tance taxes	Bank taxes	State taxes
CLASS						
1. Saratoga.....	61,917	\$1,000 00	\$2,422 43	\$877 00	\$120 11	.....
2. Montgomery.....	57,567	1,200 00	1,570 66	4,534 54	250 66	\$196 36
3. Herkimer.....	56,356	999 97	*	713 84	241 09	*
4. Chemung.....	54,662	1,300 00	1,588 23	247 58	120 20	206 95
5. Ontario.....	52,286	3,000 00	*	.....	118 07	53 73
6. Wayne.....	50,179	1,100 00	722 12	652 00	106 70	.....
7. Clinton.....	48,230	1,000 00	703 16	175 03	118 06	98 00
8. Washington.....	47,778	458 33	790 59	681 09	135 68	233 93
9. Otsego.....	47,216	600 00	433 80	435 98	.....	160 70
10. Rockland.....	46,873	3,500 00	1,393 02	4,506 63	74 00	181 82
11. Franklin.....	45,717	1,200 00	768 59	258 38	129 13	.....
12. Delaware.....	45,575	1,200 00	81 74	62 01	147 55	.....
13. Fulton.....	44,534	1,200 00	916 38	650 61	233 49	84 35
14. Columbia.....	43,658	3,000 00	976 02	1,446 63	136 61	168 33
15. Allegany.....	41,412	1,000 00	122 62	558 65	155 14	137 15
16. Madison.....	39,289	500 00	528 30	294 00	985 98	129 71
17. Livingston.....	38,037	1,000 00	536 61	147 73	59 97	182 95
18. Genesee.....	37,615	1,000 00	1,009 53	342 80	*	*
19. Chenango.....	35,575	800 00	261 50	206 21	.....	113 61
20. Tompkins.....	33,647	1,000 00	*	537 94	99 88	129 82
21. Warren.....	32,223	1,000 00	731 99	1,030 89	147 23	.....
22. Cortland.....	29,249	600 00	.....	257 71	95 27	105 28
Totals.....	989,595	\$27,658 30	\$15,557 29	\$18,617 85	\$3,474 82	\$2,182 69
CLASS						
* 1. Sullivan.....	33,808	\$900 00	\$894 40	\$73 18	\$47 49	\$99 70
2. Essex.....	33,458	1,200 00	*	66 34	54 16	.....
3. Orleans.....	32,000	1,775 00	727 28	429 59	66 83	136 92
4. Wyoming.....	31,880	800 00	233 10	242 71	63 44	.....
5. Greene.....	30,214	1,600 00	*	435 72	75 91	.....
6. Seneca.....	26,972	1,250 00	575 35	116 07	415 30	102 30
7. Tioga.....	25,624	650 00	383 48	235 10	79 03	87 73
8. Lewis.....	24,849	850 00	416 79	156 72	27 14	70 90
9. Schoharie.....	23,855	500 00	221 84	142 78	53 57	.....
10. Yates.....	18,642	650 00	4 50	161 82	46 31	77 24
11. Putnam.....	14,665	1,800 00	245 39	521 91	32 72	.....
12. Schuyler.....	14,004	500 00	52 05	49 85	12 82	.....
13. Hamilton.....	4,373	1,500 00	*	.....	*	.....
Totals.....	314,344	\$13,975 00	\$3,754 18	\$2,631 79	\$974 52	\$574 79

\* Not reported.

EXPENSES, FISCAL YEAR, 1914 *concluded*

TREASURER		Total compensation of treasurer	Expenses for clerks and assistants	ncidental office expenses	Total cost of office to county	
Court and trust fund fees	Returned tax fees					
IV						
\$73 78		\$4,493 32		\$1,900 34	\$6,393 66	1
20 13		7,772 53		1,259 64	9,032 17	2
*		1,954 90		565 69	2,520 59	3
37 28		3,500 24	\$2,100 00		5,600 24	4
*		3,171 80	735 00	781 59	4,688 39	5
172 19		2,753 01	493 26	881 26	4,127 53	6
131 41		2,225 66		397 10	2,622 76	7
36 75		2,336 97		217 53	2,554 50	8
40 80		1,671 28	370 55	830 94	2,872 77	9
		9,655 47	1,000 00	1,048 90	11,704 37	10
80 72		2,436 82	400 00	552 64	3,389 46	11
70 37		1,561 67		58 73	1,620 40	12
18 33		3,103 16	220 00		3,323 16	13
75 08		5,802 67	1,500 00	1,369 26	8,671 93	14
*		1,973 56		259 50	2,233 06	15
94 43		2,532 42	19 74	384 27	2,936 43	16
20 76		1,948 02	650 00	380 24	2,978 26	17
*		2,352 33		1,112 54	3,464 87	18
		1,381 32	300 00	189 42	1,870 74	19
*		1,767 64		149 37	1,917 01	20
9 36		2,919 47		678 91	3,598 38	21
21 35		1,079 61		81 50	1,161 11	22
\$902 92		\$68,393 87	\$7,788 55	\$13,099 37	\$89,281 79	
V						
\$62 06		\$2,076 83	\$499 98	\$379 34	\$2,956 15	1
*		1,329 50		428 28	1,748 78	2
17 08	\$84 00	3,236 50	186 67	744 60	4,167 77	3
*		1,339 25			1,339 25	4
*		2,111 63	550 00	172 21	2,833 84	5
*		2,459 02			2,459 02	6
*		1,435 34		165 00	1,600 34	7
18 93		1,540 48		379 90	1,920 38	8
16 74		934 93		189 13	1,124 06	9
*		939 87		115 00	1,054 87	10
75 12	240 50	2,915 64		111 95	3,027 59	11
		614 72	17 80	308 68	941 20	12
*		1,500 00	300 00	34 30	1,834 30	13
\$189 93	\$324 50	\$22,424 71	\$1,554 45	\$3,028 39	\$27,007 55	



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

**No. 10**

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### AMENDED RULES

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#### CHAPTER I

##### **Powers and Duties of the President and Vice-Presidents**

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both vice-presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of the committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.



10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

The President and Vice-Presidents shall be consulting members, without vote, in the several committees to which they shall not have been specifically appointed.

## CHAPTER II

### Order of Business

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts, in numerical order.

5. Reports of standing committees in the order stated in Rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from the Committee on Revision and Engrossment may be received under any order of business.

## CHAPTER III

### Rights and Duties of Members

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the

President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman. A report by a minority of any committee shall be signed by the members rendering the same.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any member may explain his vote, for not exceeding three minutes; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

## CHAPTER IV

### Order and Decorum

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V

### Order of Debate

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI

### Committees and Their Duties

Rule 15. The President shall appoint the following standing committees to report upon the subjects named and such others as may be referred to them, viz.:

1. On the bill of rights, to consist of eleven members.
2. On the Legislature, its organization, and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers, limitations and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On public utilities, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military affairs, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests and relations, except those already referred, to consist of seventeen members.

20. On the conservation of the natural resources of the State, to consist of seventeen members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.

26. Contingent expenses, to consist of seven members.

27. Rules, to consist of seven members, and the President.

28. On the civil service, to consist of eleven members.

29. On library and information.

30. On taxation, to consist of seventeen members.

Rule 16. The several committees shall consider and report, without unnecessary delay, upon the respective matters referred to them by the Convention. No favorable or adverse report by any committee, upon a proposed constitutional amendment, shall be made except by a majority of all the members of the committee. A minority of a committee may express its views in a report.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the constitutional amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all constitutional amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers

exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the money appropriated by law.

## CHAPTER VII

### General Orders and Special Orders

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order, whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII

### Committee of the Whole

Rule 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the

Whole, by a vote of the Convention. The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken, nor a limit be made as to the number of times of speaking.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed Constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed Constitutional amendment, the same shall be reported complete with any amendments made in the committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again.

## CHAPTER IX

### Proposed Amendments to the Constitution

Rule 30. No proposition for Constitutional amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for constitutional amendment by districts, in numerical order.

2. By report of a committee.

Rule 31. The title of each proposition for Constitutional amendment introduced shall state concisely its subject-matter. Matter which it is proposed to strike out shall be in brackets, and new matter shall be underscored and when printed shall be in italics. All proposed amendments shall be presented in duplicate.

Rule 32. All propositions for Constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed Constitutional amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for Constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All Constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed Constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee on their report is put.

Rule 34. No proposed Constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed Constitutional amendment shall be put upon third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed Constitutional amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed Constitutional amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed Constitutional amendment passed in Committee of the Whole.



Rule 37. The third reading of proposed Constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed Constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed Constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed Constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed Constitutional amendment, after the reading of the title, and before the reading of the text, the proposed Constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed Constitutional amendment, no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed Constitutional amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed Constitutional amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed Constitutional amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed Constitutional amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X

## Motions and Their Precedence

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions to, or for:

- |   |   |                                       |
|---|---|---------------------------------------|
| 1. Adjourn for the day.                                 | } | Not amendable or debatable.           |
| 2. Recess.  |   |                                       |
| 3. Call of the Convention.                              |   |                                       |
| 4. Previous question.                                   |   |                                       |
| 5. Lay on the table.                                    |   |                                       |
| 6. Postpone indefinitely, not amendable, but debatable. |   |                                       |
| 7. Postpone to a certain day.                           | } | Preclude debates on<br>main question. |
| 8. Go into Committee of the Whole.                      |   |                                       |
| 9. Commit to Committee of the Whole.                    |   |                                       |
| 10. Commit to a standing committee.                     |   |                                       |
| 11. Commit to a select committee.                       |   |                                       |
| 12. Amend.  |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions 1 to 11, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed Constitutional amendment, which shall be

privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI

### Of Resolutions

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business:

1. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three legislative days.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses, for their report thereon before final action by the Convention.

## CHAPTER XII

### The Previous Question

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII

### The Convention Chamber and Privileges of Admission to the Floor

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. Members of former Constitutional Conventions.
4. The members of the Senate and Assembly and ex-Speakers.
5. The State officers, deputies and commissioners.
6. The Regents of the University.
7. United States Senators and Congressmen.
8. The Capitol Commissioners.
9. Persons in the exercise of an official duty directly connected with the business of the Convention.
10. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure,

or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV

### General Rules

Rule 55. Equivalent motions, resolutions or amendments thereto, shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and, if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a Constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once, nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted,

or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions the members present shall take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their

presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and any member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties, he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employees shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole and shall, at each day's session of the Convention, furnish a copy of the debates of the day before, written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such

amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV

### Miscellaneous Provisions

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of the committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed as of course and without any special order 1,500 copies of the journal, 500 copies of the calendar, 2,500 copies of each proposed constitutional amendment, and 3,500 copies of each report and minority report of a committee on the subject of constitutional revision or amendment in which are set forth the reasons for their recommendation, to be printed as documents; 500 copies of each other document; and 3,500 copies of the record of the proceedings of the convention.

Rule 71. The printed copies provided for in Rule 70 shall be disposed of as follows:

There shall be reserved for binding 1,200 copies of the journal, 1,200 copies of the reports, 1,200 copies of the record of the proceedings.

The copies so reserved for binding shall be folded, collated and held by the printer until the close of the Convention, when they shall be bound as directed by the President or the Convention, and distributed as follows:

To each member of the Convention, two copies.

To the State Library, five copies.

To the Legislative Library, five copies.

To the office of each county clerk, one copy.



To each public library of the State, one copy.

To each bar association of the State, one copy.

To each college and university of the State, one copy, and the remaining copies shall be distributed as designated by the President or the Convention.

The printed copies provided for in Rule 70 and not reserved for binding shall be disposed of as follows:

One copy of each shall be placed upon the file of each member of the Convention, and one additional copy shall be delivered or mailed to each member as he shall direct.

Two copies of each shall be placed in the Legislative Library for use of members of the Convention.

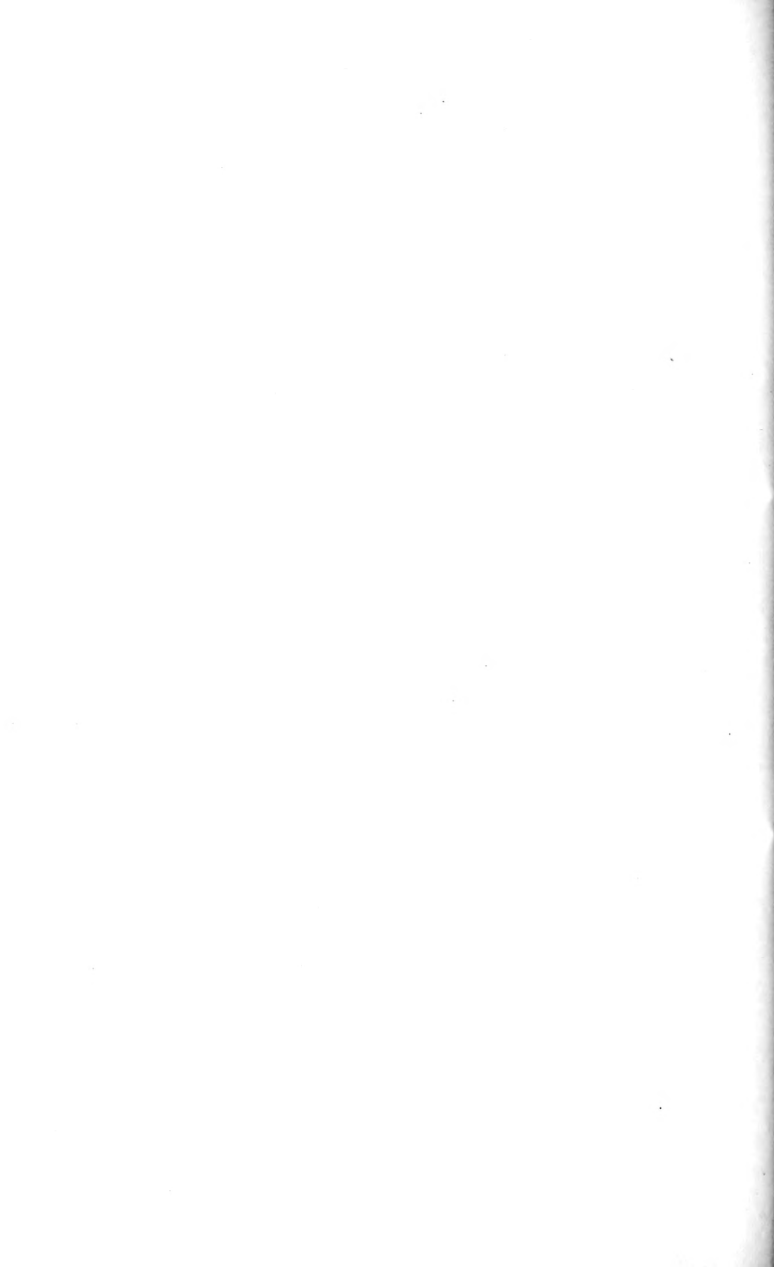
One hundred copies shall be reserved for the use of the officers of the Convention, the State Library, the Department of Education, the Legislative Index Publishing Company, and the document room reserve.

Copies of the proposed constitutional amendment, of the reports and of the record shall be mailed daily to daily newspapers and weekly to all other newspapers and to each public library of the State, each bar association of the State, each law school of the State, each college and university of the state, and to such other institutions, newspapers and individuals as shall apply therefor and can be supplied from the number printed not necessary for the current work of the Convention.

Two copies of proposed constitutional amendments and two copies of reports for each member of the committees having duty in relation thereto shall be delivered to the clerk of such committees.

The balance of printed copies provided for and not reserved for binding shall be distributed in the order of application therefor by the members of the Convention.

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.



# IN CONVENTION

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## DOCUMENT

No. 11

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JOINT MEETING OF THE COMMITTEES ON GOVERNOR  
AND OTHER STATE OFFICERS AND STATE  
FINANCES WITH HON. WILLIAM HOWARD TAFT,  
EX-PRESIDENT OF THE UNITED STATES

---

THE SENATE CHAMBER, THE CAPITOL  
ALBANY, N. Y., *June 10, 1915, 8:10 o'clock P. M.*

Mr. TANNER.—Gentlemen, the meeting will be in order.

I think I shall ask Mr. Stimson, Mr. Taft's former Secretary of War, to introduce him, as far as an introduction is necessary for Mr. Taft. (Applause.)

Mr. STIMSON.—Gentlemen of the two committees and other delegates: I don't think that Mr. Taft needs any introduction to this assembly. He has been invited and has very kindly come to speak of his experiences in regard to the Federal budget. I think I am not mistaken in saying that he is the only American President who ever attempted to create a really scientific budget of the Federal expenditures. That is the part of what he has to say that has connection with the Committee on State Finances. He also as an executive has had experience surpassing that of

almost any other executive, considering his experience in the creation of the new government in the Philippines, his experience afterward in the Cabinet of President Roosevelt, and afterward as the Chief Executive of this nation, and I understand that on that part he has been asked to speak before the Committee on the Governor and the State Officers, which has charge of the reorganization of the executive offices of this State.

Mr. President, I am sure that we feel greatly honored at your coming and at your being willing to talk to us about those two subjects.

Mr. TANNER.—Mr. President, we have a joint committee meeting to consider the subjects pending before the Committee on Governor and Other State Officers and the Committee on State Finances. If it is agreeable to you, we would like to have you speak in the order named.

The Committee on Governor and Other State Officers has made a study of the departments, commissions and boards in the executive branch of the government in New York State to-day. We have found that there are 152 of those divisions, commissions and boards, in most cases totally uncorrelated, and it seems at least to the majority of the Committee unscientific in arrangement.

The Committee for which I speak desires to get as much light as possible from the Federal system, and after that I assume that Mr. Stimson will ask you to speak on the State budget<sup>4</sup> following the lines of the Federal budget.

The meetings heretofore have been informal in character and free in questioning, and if agreeable to you, we would like to pursue that method to-night. First, if you would outline the Federal departments and submit yourself to such interrogation as the Committee desires to make.

Mr. TAFT.—Well, gentlemen of the Committee, I don't know that I am competent to aid you in determining what the State of New York ought to have by reason of any experience I have had in the State government.

When I have been the executive, the executive had control of the executive and was responsible for it. In the Philippines, the now Governor-General was a member of the

legislative body, and the members of the legislative body were his subordinates in the various departments, and then there were three members of the legislative body that were not executive. They were three Philipinos; and that made a very comfortable government, so far as having the policy which was pursued the one that the executive and the men who were responsible wished to have it. Of course in the Federal system at Washington, the President appoints the cabinet officers and appoints all executive officers — the heads of executive bureaus and independent officers. Congress has conferred some independent powers on some of the cabinet officers. The Secretary of the Treasury exercises some of those, and the Attorney-General. I believe the Attorney-General and the Secretary of the Treasury send reports directly to Congress and not through the President, but what is done is the President's word. If the Secretary of the Treasury did not do what the President wished him to do, of course he would get rid of that Secretary of the Treasury, and the same thing is true of all the officers, even with respect to functions in which they exercise an independent discretion under the law. There is only one officer who is free from the Presidential control, and that is the Comptroller of the Treasury. He acts in a quasi-judicial capacity, and if the President did not like his decisions I suppose he could remove him, but the custom has grown up to treat him as a quasi-judicial tribunal and to respect his judgments, and it is not thought that the President ought to intervene.

Mr. TANNER.—His powers are purely that of an auditor, are they not?

Mr. T.—Well, yes; he is the real auditor. He passes on claims and decides questions of law with respect to those claims, and then refers them to the Court of Claims if it is necessary.

The State government, like this of New York, with 150 counties and commissions spread all over the State, only arouses in me the same feeling that I have with respect to our methods of conducting our courts: profound admiration for the political adaptability of the people to make a machine work that nobody who had a real business sense would think would work under any other circumstances. (Applause.) They get along somehow. It costs them a great deal, but it might. But so it is.

Mr. TANNER.— Well, your idea, President Taft, is that if a scientific scheme of government, so far as the executive branch was concerned, was framed, you could practically reduce the cost by one-half?

Mr. TAFT.— Well, if you have 150 bureaus or commissions like that, independent of the governor, I should think you might. Of course that is only a very general remark. It is an unsafe remark to make. But I mean that that kind of independence of the executive, with a division into a hydra-headed beast for the consumption of the money of the people is sure to increase the expense.

Mr. TANNER.— Is that on the theory that each of these departments has its own overhead expense?

Mr. TAFT.— Yes; not only that, but that each of the departments is independent in its action and not responsible to the Governor or anybody else for efficiency and economy in its conduct; and each bureau, under those conditions — it is bad enough when they are responsible to the President — but each bureau, under those conditions, is bound to think that its function is the most important in the State, and, therefore, to enlarge its expense in every way in order that it may be useful and contribute to that uplift that it was created to effect. It works inevitably that way. It is so in every bureau in Washington, that each bureau chief thinks that that function he performs is the most important one, and that while economy ought to be in another bureau, not in that.

Mr. TANNER.— Well, what is the remedy you suggest, making fewer departments under which these bureaus can be grouped?

Mr. TAFT.— Oh, of course. I would reduce them and then I would put them all under the Governor, or under somebody that should have the power. The only way you can run a government efficiently and economically is to have the responsibility on some one as to the total expenditure.

Mr. TANNER.— Mr. President, will you describe the system that is followed in the Federal government which at least comparatively brings about the state of facts that you desire?

Mr. TAFT.—Well, the Federal government is not a model in that regard, but, under the present system, every department head and every independent office prepares an estimate of the expenses of his department for the next ensuing fiscal year, and by law it is sent to the Secretary of the Treasury. He makes a comparative statement showing the expenses that are estimated for the next year, and the expenses that are incurred in the previous year, the appropriations—that is, the estimates made in the previous year and the appropriations made on those estimates—so that a comparison can at once be instituted by the committees of Congress as to whether an increase is asked, or a decrease, and in what item. Those estimates are required to be in in the summer time, and the Secretary receives them and collates them by October, and they are sent to the committee before Congress meets. Then, under the law, he makes an estimate also of the revenues for the next year, and if there is a deficit he is required to suggest what steps should be taken to meet the deficit.

Mr. TANNER.—It would clarify the minds of the committee somewhat who have not studied into the Federal system as much as the State system, if they knew not so much how the budget is made up by the departments as how the departments themselves are made up. There are nine of those departments, that is, under cabinet heads, are there not?

Mr. TAFT.—Yes.

Mr. TANNER.—Will you be good enough to describe to the Committee what the functions approximately of these various departments are?

Mr. TAFT.—Well, there is the Secretary of State, who attends to the diplomatic relations of the government. He is the President in our diplomatic relations. He does not make a report to Congress. He recommends to the President the appointment of the ambassadors and the consular officers, the ministers. He carries on the diplomatic correspondence of the government. Then comes the Secretary of the Treasury who conducts the financial operations of the government, and then has under his control a lot of bureaus that have no more to do with financing than they have to do with any other department of the govern-

ment; but the Treasury Department was made for the time being a "catch-all" of a great many different bureaus to perform different functions, and they are not all of them related to the financial functions of the government. He attends to the collection of all taxes. He has under him the Comptroller of the Treasury, the auditors who audit for the different departments; they are his subordinates. He is the Treasurer of the United States, who holds the money, and he has three assistant secretaries, one of whom attends to the financial part, one of whom attends to the building of public buildings and superintends the supervising architect, and the other attends to the revenue service; and under him is the Commissioner of Internal Revenue and the Collector of Customs. One of those assistant secretaries rules on the questions of customs.

Then there is the Secretary of War, who has the army under him and who has also our dependencies, the Philippines, Porto Rico, and, when we have Cuba, Cuba (laughter), and then he has the Panama Canal.

Then comes the Attorney-General who conducts the Department of Justice and has the prisons and the reformatories under him, and all the executive officers of the courts, as well as the district attorneys. Then, coming after him, is the Postmaster-General, who attends to the post-office department. Following him is the Secretary of the Navy, who runs the Navy Department; and then the Secretary of the Interior, that, too, was a "catch-all" department, into which everything was put at first. The district attorneys and the marshals were under him for a time before they established the Department of Justice. Now he has the Land Office and the Patent Office, the Pension Bureau, the Reclamation of Public Lands, and some other functions; but I think I have mentioned the more important — he has — well, he has the continental territories, he has Alaska under him, and he has the Indian Department under him.

Then the Secretary of Agriculture: The name indicates what his functions are. And the Secretary of Commerce and Labor, as it was in my time, he had commercial agents under him. He had — let me see — did he have the coast survey? I think he did. Those new departments it is a little difficult to remember, because they are divided up between the Labor and the Com-



merce, in making up the nine departments, the Bureau of Mines, and in the Agricultural Department they had the Bureau of Forestry, while they had the Bureau of Lands in the Interior Department, and in the Bureau of Labor, I think now the Immigration Department has been transferred to that from the Department of Commerce and Labor. That makes up the nine departments.

Then there are some independent offices; the Civil Service Bureau is one; the Commissioners of the District of Columbia another; the Smithsonian Institute another; there are not many, but there are some independent bureaus that report directly to the President, but there are very few.

Now, the heads of departments are the President's fingers. They have been so described, and they are immediately under him. They do — of course, he grants — if he is a wise President, he grants to them very great discretion in what they do, and he relies on their advice, but they consult him about every matter of policy, and they also consult him about matters of economy, so that he has the government in his hands, and as he is responsible for the government he ought to have it, and it greatly adds to the efficiency of the Federal government. It is one of the reasons why the Federal government is so strong in its execution of law as compared with the inefficiency of state governments.

Mr. TANNER.—Regarding the Attorney-General, President Taft, the question has sometimes been raised whether or not the fact that he was an appointive officer would rob him of his independence in his functions, so far as they are advisory or quasi-judicial.

Mr. TAFT.—What judicial functions has he?

Mr. TANNER.—I mean before — for instance, starting prosecutions. I don't mean judicial strictly speaking.

Mr. TAFT.—I don't think so.

Mr. TANNER.—Has it been your experience that his being an appointive officer has made him less independent than if he were an elective?

Mr. TAFT.—Oh, I have no doubt it has.

Mr. TANNER.—To what extent.

Mr. TAFT.—Independent, if you want independence of that sort; but that is the kind of independence you don't want—at least, I don't want it. It is part of the executive. It is a prosecution it is carrying on. The government is enforcing the law. Why shouldn't it be under the man who is at the head and responsible for its enforcement? If you want a judge, why make a judge; but if you want a man who is to do things and enforce the law, when the man at the head *is charged with the faithful execution of the law*, or with taking care that the laws are faithfully executed, why shouldn't the man who conducts the prosecution and represents the state from the executive standpoint, be responsible to the man at the head of the state?

Mr. STIMSON.—I think the question generally asked, Mr. President, is not in respect to his prosecuting functions, but in respect to his functions as an advisor of the different departments of the State. It is argued that an elective Attorney-General is a more accurate and independent adviser of the different officers of the State whom it is his business under the law to advise.

Mr. TAFT.—Well, if you are going to have a lot of independent officers, who are running their own boats, paddling their own canoes, without respect to the head of the State, then, of course, you want a judicial officer to decide between them. But if you are running a government on the basis of the head man being responsible for what is done, and for the work being done in the most effective way, then what you want is a counsel. When you consult a lawyer, you don't consult a judge. You consult a man who is with you, seeking to help you in carrying out the lawful purposes that you have. Therefore he ought to be your appointee. You select him. If you go to a counsellor to help you in matters of law. Now the chief executive is given an Attorney-General to advise and represent him in all legal matters. I don't see why he shouldn't be appointed. It would be most awkward if he was not, in Washington, I can tell you that. (Laughter.)

Mr. TANNER.—President Taft, I don't know whether this is a fair question or not, for it relates to the State government: This

morning in the Convention there was introduced an amendment which, among other things, provided that the Governor should have power to modify or veto the rules, regulations, orders or decisions of all boards and commissions in the executive branch of the government. I assume that does not refer to the Public Service Commissions or quasi-judicial bodies. To what extent does the President either have or exercise that power over the rules or decisions of the commissions or executive departments where he makes the appointment?

MR. TAFT.—Well, take the regulations of the Internal Revenue Department. The President never sees them. They are made up by the Commissioner of Internal Revenue, and the Secretary of the Treasury approves them. The regulations with respect to the Civil Service Bureau cannot have any effect until the President approves; but that is because they are an independent bureau. In other words, the heads of departments are generally called upon to approve all the regulations, but those regulations are all under the control of the President, and if his attention is called to some regulation that ought not to be there, and he concludes it ought not to be there, he asks the head of the department to modify it. It is not a question of what he actually does, but what he may do when the issue arises. And except with respect to the Comptroller of the Treasury, to which I referred, his will prevails. Of course when you come to the Interstate Commerce Commission, the Interstate Commerce Commission, in my judgment, is not an executive tribunal. Of course it makes the constitutional lawyer that regards the rule that you cannot have delegated legislative power, it gives him goose flesh to have it called what it really is, namely, it is the delegation of power by Congress to the Interstate Commerce Commission to do that which Congress is not so constituted that it may do, because it cannot sit all the time and cannot pass on a million rates. But that is what the Interstate Commerce Commission does under the rules laid down. That is not an executive commission and it is not under the control of the President, because it is exercising legislative power.

MR. TANNER.—Gentlemen, are there any other questions by the Committee on Governor and Other State Officers?

Mr. RHEES.— Might I ask one question? What auditing function is there in the United States government which has any independence of the executive?

Mr. TAFT.— Practically none. The Comptroller of the Treasury is at the head of the auditors. There are appeals from the six auditors of the treasury to the Comptroller of the Treasury, who puts the final audit, and there is practically nothing independent of the executive.

Mr. RHEES.— Is the Comptroller of the Treasury charged with the duty of certifying all payments from the treasury?

Mr. TAFT.— He is charged with the duty of countersigning every warrant, and nothing is taken out of the — no warrant is honored by the Treasurer except on his certificate.

Mr. STIMSON.— But by custom, Mr. President, he is treated as a very independent officer?

Mr. TAFT.— Oh, yes. Congress has made him, as I say, a quasi-judicial tribunal with respect to claims and with respect to compliance with law, but he is appointed by the President and may be removed by the President.

Mr. STIMSON.— But, as a matter of fact, that has never happened within the memory of any of us?

Mr. TAFT.— Oh, no; I don't remember —

Mr. STIMSON.— And he often makes very embarrassing decisions when he stops the various cabinet officers from spending money? Spending what they would like to spend?

Mr. TAFT.— Yes, he does.

Mr. STIMSON.— I saw the other day he just stopped a very important expenditure of money in the War Department on these manoeuvre camps. Nobody thinks of removing him because he does that?

Mr. TAFT.— No. As a general rule, the Comptroller of the Treasury is regarded as quite an independent officer, and frequently executive policy is determined by sending over to the

Comptroller to learn whether such an expenditure would be lawful or not, and when he approves — Congress has clothed him with such powers that when he approves — the executive feels safe about it. He sometimes comes into conflict with the opinion of the Attorney-General; and he does not yield to the Attorney-General, and is not obliged to.

Mr. RHEES.—Is the Comptroller of the Treasury — does he change ordinarily with the change of administration?

Mr. TAFT.—Yes; ordinarily he does. He did not change in my day; but, then, very few did. (Laughter.)

Mr. Low.—Mr. President, is the Comptroller of the Treasury a different officer from the Comptroller of the Currency?

Mr. TAFT.—Yes; the Comptroller of the Currency is at the head of the Banking Department; also in the treasury, however, and part of the fiscal machinery.

Mr. TANNER.—Mr. President, you have described the effect that this concentrated machinery has on the efficiency of the government of the United States as compared with the efficiency of the State government. Have you any observation to make as to the effect of that same concentrated authority on the relative expense of the government?

Mr. TAFT.—Yes; I think it is — of course it is unwise to institute a comparison where a comparison is not possible — but I should think that *a priori*, you might say that the more you concentrate authority in the executive, the greater control he has over the economical expenditure of money, and, therefore, that it would be likely to save money. —

Mr. TANNER.—Isn't that the same system followed in every big business corporation?

Mr. TAFT.—Yes; it is; every one.

Mr. TANNER.—Are there any further questions, gentlemen?

Mr. STIMSON.—Mr. President, my committee, the Committee on Finance, has been investigating into the budget methods of the State of New York. We find the situation here is somewhat

like what I remember to have been the case in the Federal government. The estimates are made up by the different bureaus who, in the State of New York, seem to have the same idea as to the importance of their various bureaus that you have described their having in the Federal government and, as a result, the different estimates when they are prepared and sent to the Legislature are regularly so high that the Legislature does not pay much attention to them, and begins over again. They go to the Legislature through the Comptroller of the State, under a statute which was passed in 1910, but the Comptroller has no power to revise them or cut them down. He simply transmits them — collates them and transmits them to the Legislature. When they go to the Legislature they are handled by one committee, the Committee on Ways and Means, in that respect differing from the Congress, where in the House of Representatives they are handled by some eight committees. The Legislature seems to be quite similar, in some of its characteristics, to Congress. We find that it is quite as favorite a thing to pass bridge bills in the Legislature for the benefit of different districts as it was to pass post-office bills or public building bills in Congress. But, at any rate, after they reach the Legislature there is no restriction upon additions for private bills.

That presents the problem which this committee has been considering. There is this additional great difference in the State: That here the Governor has the power to veto separate items in the appropriation bills when they come through, and the President has only the power to veto the whole bill or nothing.

Now, I am sure that the Committee on Finance would be very glad to hear the history of your efforts to introduce a better system in the Federal government than what you found there.

MR. TAFT.—Well, when I entered office I had a very strong purpose to reduce expenses, if I could, and so when the estimates began to come in I examined the law and found that the estimates never touched me at all. The chiefs of bureaus got up the estimates and submitted them to the heads of departments, and the heads of departments sent them on to the Secretary of the Treasury, and he made out the comparative statement that I have already referred to, and the President had nothing to do with it.

The first embarrassment that I felt was that I did not know how to save. I wanted to. I was anxious to put in the knife and cut down the appropriations that seemed to me to be running high, but I had not any information. I could send for the head of the department, and he would say the bureau chief says this must be spent and that must be spent, and there was no means of finding out just where, because I was not sufficiently familiar with all the departments—just where that economy could be effected that I was seeking; so I first issued an order that not an estimate should be sent in to the Secretary of the Treasury until it had been submitted to me, and then I got out a club and told the head of every department he would have to cut down, and I made him cut so that I cut about fifty or sixty or, perhaps, seventy millions out of the appropriations, and I thought I was doing a big thing. I notified Congress that I had done so, and that I had cut to the quick, and that we ought not, therefore, to be treated as we had been theretofore by the Appropriation Committee, namely, to be treated as if we had sent in about 25 per cent. more than we needed, expecting it to be cut down that amount. But Congress did not act on that basis. They thought I was lying about it (laughter) or that those who were talking to me were lying about it, and so they proceeded to cut in respect to those matters that the particular committee was not specially interested in. (Laughter.) That is where they cut (laughter) and the consequence was that when I got through I found that the cuts had not been made judiciously or with knowledge, and that within the next year we had to provide deficiency appropriations to meet cuts that had not been wisely made, largely because it was not possible under the information available to know where economy could be effected. So I induced Congress to give us an Economy and Efficiency Commission, and set them to work, and the first thing they did was to find out what the government was that we had. There was not a statement anywhere in a comprehensive form that enabled you to know what the various functions were that were being performed. You could go through the statutes, if you hadn't anything else to do, and you had three or four years to do it in, and find out all those functions, and that is the first thing that the Economy and

Efficiency Commission did, and they made a most comprehensive statement carrying the activities of the government down to the last man—to the last bureau and office and commission, and then to the last man—so that if you consult it you can find out just what his function is in government. Congress never printed that. It is there and some day it will be useful, when they wipe the dust off those volumes, because it will be taken as the basis for an addition to bring it up to date, and then it will be a map which can be examined and consulted for the purpose of knowing what is the government, with reference to determining where there are overlapping functions and where economy can be introduced. Having done that, then they went on to make various examinations for the purpose of showing by illustration how the economies could be introduced into the various departments, how methods of business efficiency could be introduced that would save to the government a considerable amount of money.

Of course, these amounts to be saved are not large, as compared with the River and Harbor Bill or the Navy Bill or the Army Bill, and so it is like that old darkey who consulted his master as to how many would be saved. He wanted to know if half would be saved, and his master said he didn't think there would be. Finally he got down to a sixty-fourth, and the master wasn't certain, and the darkey said, "Well, master, I don't think there's any use puttering about it." (Laughter.) And that is the difficulty with these efforts to save. You have got to begin with the small things. That is what the heads of all these great industrial organizations do, and in the end they make a great economy. But we haven't the patience in our political government to begin that way; at least we haven't up to this date. Perhaps we will have later on, because the pressure of expense is growing heavier each year and ultimately Congress may see the necessity.

Now we went on, and finally I directed, after these examples had been made by the commission to show how many economies could be effected, then I asked the commission—they made reports recommending budgets and the preparation of a proper budget. They prepared the budget for one year; that is, they transposed what had been a statement of the estimates and the appropriation



and put it in the form of what they thought a proper budget should contain, and having done that, I sent it in to Congress with a message recommending it — and thereupon Congress promptly passed a statute providing that no clerk in the government should be used in the preparation of the budget — that I announced I expected to send in to the next Congress. Congress didn't have any power to limit what I should send in to the next Congress, and I told the heads of departments to disregard that statute.

I observed my friend, Mr. Fitzgerald, was here the other day and said that they did not propose to have a budget sent in in that form. He isn't quite ingenuous in that regard. There was not any doubt about our sending in the old estimates, because the old statute required us to send in the old estimate. What they were trying to do was to prevent my sending in a new estimate in addition; but they did not do it, because I sent it in; but that is preserved under the dust. (Laughter.) It doesn't need any — (Laughter.) Now, that budget was accompanied by a statement of the financial condition of the government. I don't think that it will cause heart disease to gentlemen familiar with the operations of the New York State government to have me say that it is very difficult to get at the financial condition of the United States government. (Laughter.)

The treasury statement is very much better now than it was, and Mr. McVeagh improved it, and the recommendations of the Economy Commission in some respects were followed, but it is very difficult to state a balance, as to how much money there is in the treasury available for general appropriation. There is so much money against which there are liabilities that it is difficult to dig out. The Economy and Efficiency Commission found that there were some funds supposed to be available for general appropriation, against which there were liabilities amounting to about twenty millions of dollars.

[Now, part of the budget statement should be a statement of the financial condition of the government, so that Congress may know how much money there is in the treasury; so that the executive may know how much money there is in the treasury, and how much revenue is needed in addition to pay the expenses and to meet the expenditures that are proposed.

I became convinced that there was no hope of real economy in the Federal government unless Congress passed an act giving to the executive the power and the means to prepare a full statement of the expenditures for which he was willing to become responsible, after consultation with his cabinet, and then a full statement as to how those expenditures were to be met. And then, having made himself responsible for that, give him the opportunity to send his representatives on the floor of the House to accompany those bills through both houses and argue out the question. But it is objected that that won't work. Well, I think it will. There have been two committees of the ablest men in Congress, one in the House and one in the Senate, have recommended that system; and while it is not the English system, in that they are not members of the House, Congress has the power to give them every function and every faculty that a member of the House has, except that of voting.) I observe Mr. Fitzgerald thinks they won't be there. Well, I think they will be there if they are interested in defending the administration, and I think they will take part in a running debate. I know some members of the cabinet that would like to. I know some that would like to get there. (Laughter.) It is not pleasant being pounded at the other end of the avenue without having an opportunity to explain, and I think they would be on the floor and I think that they would really help Congress with reference to the actual facts of the running of each department and the actual question of what expenditures are necessary and what are not.

Mr. STIMSON.—Isn't it a fact, within the notice of everybody who has watched the debates, that Congress has debated for hours and days over a question which a single answer from the man who knew would put an end to?

Mr. TAFT.—Oh, yes; often; often. The budget ought to state the expenses in such a way as to show them in several different forms, so as to bring to the attention of Congress how much money is to be expended for particular activities, so that the President, in recommending what the expenses shall be, may be able to point out that he has saved here in order that this activity may not suffer, and that the other may be cut down without damage; so that he may give to Congress the sense of proportion that

prevailed in the cabinet when the sum total was found to be too great, and the compromise was effected by the sacrifice of certain expenditures in order that the more important ones should be provided for.

Mr. STIMSON.—The difference between making economy with a pruning knife and making it with an axe.

Mr. TAFT.—That is just it exactly. Then you make it with knowledge, and you have a statement put before you by which you are able to shape a financial policy, and then you make your provision for the revenue by passing additional revenue laws, if necessary, or borrowing money, if necessary, for some object that might very well be paid for gradually and transferred in part to posterity.

Mr. STIMSON.—Well, when Mr. Fitzgerald was here, Mr. President, he argued very strongly for very much the same sort of system you have described, except for the point of having the cabinet officers go on to the floor.

Mr. TAFT.—Well, I regard him as a brand plucked from the burning. (Laughter.)

Mr. BEACH.—Mr. President, when President Root in his opening address before this Convention made his remarks, he said in substance, amongst other things, that giving a man responsibility without power was only a little short of giving a man power without responsibility. When Congressman Fitzgerald was before the Committee on State Finances, he was asked the question whether in his opinion it would be advisable for a government official, a cabinet officer, to appear before Congress and advocate the measures which related to his department. And he said no, because the prestige of such an officer would enable him to prepare his argument in advance, to send it out to the newspapers to be released upon a certain date,—

Mr. TAFT.—Something that no Congressman ever did. (Laughter.)

Mr. BEACH.—And which would carry such a prestige that the little Congressman who answered would lose his remarks in

the Congressional Record. Now, what I would like to ask you is whether Congressman Fitzgerald is right, or whether their being asked these questions by any one of these Congressmen would not enforce the cabinet officer's being more thoroughly prepared upon all the details of his department than he is now?

Mr. TAFT.— Oh, undoubtedly. It would make better cabinet officers. It would make the President look about and have a man who could stand on his feet and answer and protect the administration in Congress, and that is the kind of man we ought to have. This idea that a cabinet officer on the floor of the House would overawe the Congressmen, that was just a bit of humor by Mr. Fitzgerald, that's all. (Laughter.) I had this experience: The Filipinos did not have any representative when I was Secretary of War, and I wanted to get through some legislation, and I went up to the Senate to ask for it. They do let the heads of departments on the floor of the House. That is a great concession.

Mr. STIMSON.— Without the privilege of speaking.

Mr. TAFT.— Yes; without the privilege speaking. And I went up and went on to the floor of the Senate and spoke to one Senator and asked him if he would not bring up a bill that was pending. The committee had recommitted it, and I would like to get it up for passage because it was needed in the Philippines, and he said, "No, I won't do that." And I said, "You are second on the committee and the Chairman is away, and I thought you might act for him," and he said, "I am against that, and I am against your whole policy in the Philippines, and I won't help you at all. Anyhow," he said, "what are you here for?" He said, "You are lobbying." I said, "I am here because there is nobody to represent the Philippines, and I want to help those people out there, and this is going to help them." "Well," he said, "I am a friend of yours, but I want to tell you that your being on the floor is noticed. It is working against you." He said, "I am in favor of separating the legislative from the executive." This is when I was Secretary of War. "Well," I said, "look here, Senator, what do you come down to my department for and intervene with reference to what I am to do in the Secretary of War's position?" "Oh," he said, "that's different; that's personal." (Laughter.)

Now, it would be a change, a very considerable change, but I think it would be for the better. I think that this matter of publication would be attended to by the gentlemen; that would be a personal matter. (Laughter.) It would be a question of publicity and that is a personal matter ordinarily (laughter); but with reference to the added efficiency in legislative action, I have no doubt at all, because it would enable them to know quickly. Of course men would differ in being able to present what the facts would be in respect to appropriations and general legislation, but I should think that a man who was very familiar with the department, as the head of the department would certainly come to be, if he was to be exposed to the searching questions and examination and attacks that would be made on the floor of the House, that it would result in a great deal of useful knowledge being imparted to the members of Congress, and so would help legislation and accurate knowledge of the conditions.

Mr. STIMSON.—President Lowell this afternoon explained to these committees the workings of that same method of asking questions, Question Day in the House of Commons, and explained the importance which it was there as a constant oversight and supervision over the workings of the executive department which was kept up by Parliament.

Mr. TAFT.—Yes.

Mr. STIMSON.—Do you see any reason why it would not work well in our government?

Mr. TAFT.—I should think it would. Of course I suppose a rule would be put in such as they have, I believe, in the English Parliament, by which it goes over for one day if the minister asked desires it, and then it comes up the next day for answer.

Mr. STIMSON.—He can have the question put in writing, with a day's notice, if he desires?

Mr. TAFT.—Yes, but as I understand it, they have a running debate, and questions are asked of the minister if the debate suggests the question; and they certainly might here.

Mr. STIMSON.—Well, now, one further thing, Mr. President. When Mr. Fitzgerald was here, he argued very strongly as a part

of the system that when the budget which he unites with you in urging that it should be prepared by the executive, when this budget comes to —

Mr. TAFT.—Well, now, wait a minute about that budget. I saw Mr. Fitzgerald said that we had a budget there that if the executive had only performed his duty they would have had a budget. Well, they do have a statute, and I have recited what it was: That every bureau chief should prepare estimates for the head of the department and the head of the department should send those estimates to the Secretary of the Treasury, and then the Secretary of the Treasury should send it on with this comparative statement to the Appropriation Committee of the House of Representatives. There is no power anywhere in the statute anywhere, and Congress did not intend there should be, by which the estimates of the heads of departments should be cut down with respect to the total, at all. There is no — well, you can call it a budget if you want to, but it is a budget in respect to which no one has any discretion in arranging it with reference to its total and with — and it is true the Secretary of the Treasury, if he adds up those totals made by these earnest, enthusiastic bureau chiefs, who want to get all the money they can in order to exalt their own bureaus and make them as useful as possible, then the Secretary of the Treasury, having taken that total has to look around and see if there is enough money in the treasury under the ordinary revenue acts to meet those expenses, and that is the only kind of a budget there is.

Mr. STIMSON.— But Mr. Fitzgerald urged very strongly as an ideal system that that power to revise should be given to the executive so that he could present a budget which was a revised budget and a cut-down budget.

Mr. TAFT.— Yes, but he did say — he did say that if the executive had executed that law, that then they would have had a very fine budget. I want to get it in the record. (Laughter.)

Mr. STIMSON.— In the absence of Mr. Fitzgerald, I am merely trying to —

Mr. TAFT.— That's all right.

Mr. STIMSON.— I wanted to represent what I understood he had said.

Mr. TAFT.—That's all right. I am delighted to welcome Mr. Fitzgerald over on the other side. It is one of the satisfactions of my retirement to see that since I have left he has become convinced. (Laughter.) And it is a victory that shows the merit there is in the cause, because I want to say for Mr. Fitzgerald that he has been struggling for economy all the time that I have known him. He has been the head of the Appropriations Committee. The head of the Appropriations Committee, and the members of that committee are about the only economists there are in Congress, and they have great difficulty, because all of these other committees, the Army and the Navy Committee, and the Post-office Committee, and the Agricultural Committee, and the Indian Committee, and the Pension Committee, they are all looking around with mouths open to get as much appropriation as they can, and the only brake is the head of the Appropriation Committee and those who stand behind him, and he has been through the fire; he has been tested and now he comes out purer in his thoughts and in his views of what ought to be done, and I am glad to welcome him over as a convert. (Laughter.)

Mr. STIMSON.—Well, Mr. President, as the result of that ordeal by fire (laughter) Mr. Fitzgerald recommended very strongly that when this budget which should be prepared by the executive was finally transmitted to Congress, that Congress, while it had the power to cut it down, should not have the power to raise it unless by some very preponderating vote, like a two-thirds or a three-fourths vote. In other words, that there should be a brake put upon the power of Congress to raise the estimates sent in by the executives after they got there. What can you say about the desirability of such a provision as that?

Mr. TAFT.—Well, I think it would be a most admirable thing if we could get it in the Federal system.

Mr. STIMSON.—Well, of course, here we are revising the State Constitution so that this Convention has the right to put it into the State government.

Mr. TAFT.—I am coming to that. I understand that. I think if we could get it in the Federal system, it would be most admirable. I don't think Mr. Fitzgerald has said that there was any

reasonable hope that in the future it would be introduced in the federal system, has he?

Mr. STIMSON.—By Congress itself?

Mr. TAFT.—Oh, by act or statute.

Mr. STIMSON.—The only way it can come in the Federal system is by the act of Congress itself.

Mr. TAFT.—Well, I think a Constitutional amendment would be just about as easy as the action of Congress itself in that regard. (Laughter. Of course, Mr. Fitzgerald looks at it from the standpoint that you do and I do. He is really in favor of reducing appropriations, and he is very much opposed to these leakages that arise from log-rolling measures, and he struggled most sincerely to bring it about, and he has reached the conclusion you state.

Now you in New York have the great advantage that in your present Constitution, you have already given the Governor the power, after your appropriations have been made, and after your budget has been formed and adopted, of cutting it down, as he chooses.

Mr. STIMSON.—Not altogether. He can only cut out whole items. He cannot reduce them.

Mr. TAFT.—That is a very important power, but it seems to me it is at the wrong end. If you treat the function as the one that the Legislature has or that Parliament had, namely, of holding the King to an accountability with reference to the money that he proposes to spend, and refuse to him the petition that he made to them to allow him the authority to spend it, then their function, as it has come down to us, was that of cutting down and not of increasing, and the standing order of the House of Commons was that no appropriation could be increased except on a motion of the government. Of course that, when it first was adopted, referred to the action of the King; but it has now come to mean those who are responsible for the Executive, namely, those who are the leaders of the majority in the Lower House. (But as you have here now the power of the Governor to cut at the end; why, here your people are accustomed to the Governor's limiting appropria-



tions after the legislative power has been exercised,—the power to take money out of the treasury by the Legislature,—now why don't you shift it around and let the Governor exercise that power in the beginning, and then make him responsible to the Legislature, so that the Legislature can cut down and not increase. I think that would be an admirable change, and you put the responsibility of proposing the budget where it ought to be, on the executive. He is the man who has the responsibility of execution; he is the man who spends the money; he knows and has the means of knowing where the money is to be spent. If the Legislature wishes to adopt a general policy and pass general legislation that involves expenditure, of course he would then have to put that into the budget that is to be prepared, but in the matter of detailed expenditure, in the matter where real efficiency and economy is to be worked out executively, he is the one that ought to have that power and responsibility; and by sending it in in that form and limiting the power of the Legislature to add to it, you take away that weakness that legislatures and congresses have, and that weakness that the people have. That is all there is about it. We might as well look right down to the source of power. It is the people in each district, in each Congressional district and in each county that want to get for themselves something out of the State treasury. Now, if you make the Governor responsible, you will save the people from their own weakness in that regard. They think more of a bridge or a post-office or something in their town than they do of the general condition of the treasury. It is for the people in the district. You talk to a man who comes from the interior and he says, "These river and harbor bills are horrible, horrible. They are bankrupting the treasury and making this income tax necessary," and everything of that sort, and then you ask him about that \$500,000 postoffice in a town needing only a \$100,000 postoffice, and he says, "Well, this government is a great government, and it needs a dignified place for its offices." (Laughter.) So that I think if you could introduce that into the federal government, I should think it would be admirable; but here you have the step already taken in the case of the Governor, and all you have to do is just to turn it over—just to make the exercise of that power a little earlier in the adoption of the budget.)

Mr. Low.—Well, Mr. President, isn't there really a vital principle involved in that turnover that you recommend?

Mr. TAFT.—What is it?

Mr. Low.—It seems to me to be this: By the present system in New York State, the representatives of the people in the Legislature say, "Here is so much money you can spend," and the Governor says how much he will take. It seems to me that the true policy is that the Governor should say to the Legislature, "We need so much to run the government," and the Legislature says, "You can have this and no more." In other words, they protect or ought to protect the purse by saying how much can be spent. At present our practice, I think, precisely reverses what ought to be the relation between the executive and the legislative.

Mr. TAFT.—Well, it would be a reversal in that sense; but I am talking from the standpoint of getting it through.

Mr. Low.—I understand.

Mr. TAFT.—I mean of having the popular mind adjusted to a situation where a member of the Legislature cannot get a bridge just because the people of his district want it.

Mr. Low.—I am in perfect sympathy with your proposal.

Mr. TAFT.—I agree it is a change in the function that the Legislature performs.

Mr. STIMSON.—You are calling attention to the sugar coat of the pill and Dr. Low is calling attention to the medicinal properties inside.

Mr. TAFT.—Yes. It makes the Legislature a brake upon the expenditure recommended by the Governor, instead of the Governor being a brake upon the expenditure adopted by the Legislature.

Mr. Low.—Precisely.

Mr. TAFT.—And the burden of expense in the State government and in the national government is growing so rapidly that something must be done, and if you would only follow in this great Empire State of New York a new model, why you would

be building better than you know. It will influence constitutions everywhere, if it works, as it seems to me that it would work, to your great benefit.

Mr. STIMSON.—Mr. Fitzgerald called attention to a number of instances that I think you are probably familiar with of the way in which it would work in economy. He mentioned how long it took Congress to economize as to the customs agencies, and the pension agencies.

Mr. TAFT.—Why, they fought—they fought, well, I think it was five or six Congresses, over the question whether they should give up pension agencies in three or four towns where they were not needed at all. Everybody agreed they were not needed.

Mr. STIMSON.—The Executive was recommending it year after year?

Mr. TAFT.—Yes. It would pass one house, and then they would hold up in conference these great appropriation bills for millions of dollars just on the question whether two or three pension agents should be retained in one or two towns that were in critical States. (Laughter.) I tell you, an economist in Congress under certain conditions, has a hard time. (Laughter.) And Mr. Fitzgerald has my deep sympathy. I know. I know. What is everybody's business is nobody's business, and the responsibility for the expenditures is not felt except in one day in Congress, and that is when the leaders of the House—the leader of the House and the leader of the opposition, or, rather, the Appropriation Committee, get up to explain on the one hand how economical they have been, and on the other hand how extravagant they have been, and everyone who hears them knows in his heart that both speeches are buncombe, because in most of the extravagant estimates, both parties are responsible. It is so with the River and Harbor Bill, and it is so with the Public Buildings Bill; it is so with the Sundry Civil Bill, and there are roses that grow over the party wall (laughter) in their respective appropriations. (Laughter and applause.)

Mr. STIMSON.—Mr. President, isn't the real vice in the present system that Congress is put in the position of trying to criticize

its own work where in the method you propose Congress would be criticizing the work of the executive?

Mr. TAFT.— Yes; that is it exactly; it would.

Mr. STIMSON.— And it would therefore do it much more thoroughly?

Mr. TAFT.— That is it, exactly. Mr. Fitzgerald — I am a great admirer of Mr. Fitzgerald. He got up and told the truth in Congress once. (Laughter.) He said — well, that's a very good record. (Laughter.) He said, "Gentlemen, this business of appropriating money as we have gone on with it in this House and in this Congress, is a horrible mess." And it was, and it is (laughter) under the system that there prevails. I did not mean to limit Mr. Fitzgerald (laughter) in his truthful statements; but that one impressed me. (Laughter.)

Mr. STIMSON.— Have any of the gentlemen of the Committee any questions that they would like to ask Mr. Taft?

Mr. PARSONS.— Mr. President — I would like to ask a question.

Mr. TAFT.— How do you do, Mr. Parsons?

Mr. PARSONS.— One of the arguments in favor of the present system is that the passing of an appropriation bill is a legislative function, and that our system of government leads to the separation of the executive from the legislative. You said in the Philippines, you were as an executive also in the legislative branch of the government. Did you find that worked well or ill?

Mr. TAFT.— I thought it worked well. I have no nightmare about this union of the legislative and the executive. I think it is not well to be dogmatic on such a proposition. I think one of the difficulties we find in our government is the rigid exclusion or the attempt to make a rigid separation between the two, and I think there might be greater union, with greater efficiency in the matter of government on the one hand, and greater economy.

Mr. PARSONS.— When the fundamental law for the government of the Philippines was to be drafted, you had to do with it, and that distinction was obliterated, was it not?

Mr. TAFT.—It was. That is, there were five—let's see—were there—yes, there were five members of the executive that constituted the majority of the eight who were the legislature.

Mr. PARSONS.—And that distinction was also obliterated when the law was passed for the government of Porto Rico, was it not?

Mr. TAFT.—I think it was. I am not so familiar with Porto Rico, but I think—I think the members of the executive were the members of the upper house there.

Mr. PARSONS.—So that the administration of Mr. McKinley and the Congress did not hesitate to obliterate that distinction?

Mr. TAFT.—No, sir.

Mr. PARSONS.—And no ill effects have come from obliterating it?

Mr. TAFT.—No, sir. The only ill effects have come when they have introduced the second body—the lower House—out there.

Mr. STIMSON.—But, Mr. President, in the suggestions you have made as to the budget, there is no obliteration at all; the two branches of the government—

Mr. TAFT.—Oh, no.

Mr. STIMSON.—Remain wholly separate. It is simply the proposition of introducing better working relations between two branches of government whose origin remains quite distinct.

Mr. TAFT.—Congress could—I presume—impose this limitation on itself, but here in your Constitutional Convention, you don't have to depend upon a self-imposed limitation.

Mr. STIMSON.—But in the suggestions that you have made that the executive should recommend a budget, and that his cabinet officers should be allowed to support it, it is merely carrying into a little more workable form, the relations he has now in recommending legislation?

Mr. TAFT.—Yes.

Mr. STIMSON.—It does not at all obliterate the distinction between the way in which the executive is elected on the one hand, and the legislature on the other?

Mr. TAFT.—It is merely making him an active figure instead of a figurehead. That is all.

Mr. STIMSON.—It is only allowing it to be done in the natural and normal way instead of artificially?

Mr. TAFT.—Yes.

Mr. CULLINAN.—Mr. President, I understand from you that you think in the State of New York our system of check on improper appropriations by the Governor is good, but might be improved on?

Mr. TAFT.—Yes, sir.

Mr. CULLINAN.—Yes. Well, then, do I understand that you believe that that method is superior to the condition in the Federal government?

Mr. TAFT.—Well, with respect to the Federal government, I have had my doubts as to the wisdom of having the President veto items in an appropriation bill. The President has a good deal of power anyhow, and there are a good many items in an appropriation bill. There are a good many items in which Congressmen are personally interested, and I don't think that is a good way to increase that power of the President. I think it might give him too great power. I think if you made him responsible for a budget in advance, and prevented Congress from cutting it down, it would be a good deal safer in the matter of extending powers to the President than it would be to give him the right in the end to pick out and eliminate. I don't know how it has worked in New York. I am not familiar with it, but with my general knowledge of political agencies I should think it might be made an instrument of very considerable influence. (Laughter.)

Mr. CULLINAN.—Well, Mr. President, assuming that the President had the power to control the budget in advance, would he—do you think he would be exempt from the influences that you say exist in the case of the departments sending in their budgets; that is, having an exaggerated idea as to how money should be spent?

Mr. TAFT.—You mean that he would wish to spend money—

Mr. CULLINAN.—Yes.

Mr. TAFT.—No; oh, no; no, sir. The burden on the President with reference to economy is too great. It is the fellow who is in an isolated bureau or department that gets the swelled head about the necessity for supporting his particular bureau, but with the whole field before him and with the responsibility for the expenses of the government such as would be on him, you can trust the President to wish to have as much economy as possible, and under this system, if he did not, there would be the House to cut it down. When they could not do anything except cut it down they are likely to exercise the function. (Laughter.)

Mr. CULLINAN.—Well, Mr. President, we might have a bad Governor in this State.

Mr. TAFT.—Yes, I know you might have a bad Governor in it, and if you are working on the principle that you are going to have a bad Governor, and, therefore, you ought to shackle him and put handcuffs on him, then you won't get any government at all. I don't agree to the theory that because a bad man might get into a position of responsibility, where in order to do the people's work he has got to have the power, that with that power he might injure the people, therefore you ought to withhold the power—I don't agree to that at all. I think if you do, we will have an ineffective government.

Mr. CULLINAN.—In other words, you believe in judging a system by its merits and not by its demerits.

Mr. TAFT.—I do. I am opposed to an insurance so heavy against dishonesty that it interferes with efficiency.

Mr. STIMSON.—Have any other members of the Committee any questions to ask the President?

I think I voice the sentiment of the entire membership of both committees, as well as our fellow delegates who have heard you this evening, Mr. Taft, when I say that we are very greatly indebted to you for coming here and for giving us this very clear presentation of a difficult subject.

Mr. TAFT.—No indebtedness at all, gentlemen. You have not had as much fun as I have. (Laughter.)

Whereupon, at 9:35 o'clock P. M., the meeting adjourned.





# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 12

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#### REPLY OF THE LIEUTENANT-GOVERNOR AND ACTING GOVERNOR TO RESOLUTION OF THE CONVENTION

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STATE OF NEW YORK — EXECUTIVE CHAMBER

ALBANY, *June 8, 1915*

HON. JESSE S. PHILLIPS, *Chairman, Library Information Committee, Constitutional Convention, Albany, N. Y.:*

Dear Sir.—In reply to the resolution adopted by the Constitution Convention on May 20, 1915, I have the honor to make the following report:

1. The number of prisoners confined in the several State prisons, reformatories and penitentiaries of the State on January 2, 1915, was:

Sing Sing prison, Ossining.....	1,563
Auburn prison, Auburn . . . . .	1,462
Clinton prison, Dannemora . . . . .	1,386
Great Meadow prison, Comstock . . . . .	641
Women's prison, Auburn . . . . .	107

Dannemora State Hospital, Dannemora.....	321
Matteawan State Hospital, Beacon.....	149
State Farm for Women, Valatie.....	31
New York State Reformatory, Elmira.....	1,386
Eastern New York Reformatory, Napanoch.....	447
New York State Reformatory for Women, Bedford...	421
Western House of Refuge for Women, Albion.....	244
Albany County Penitentiary, Albany.....	546
Erie County Penitentiary, Buffalo.....	1,021
Monroe County Penitentiary, Rochester.....	471
New York County Penitentiary, Blackwell's Island...	2,115
Onondaga County Penitentiary, Jamesville.....	506
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Total . . . . .	12,817
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2. The number of applications for pardon and commutation of sentence, respectively, filed in the Executive Department during each of the years from 1900 to 1915:

Year	New Applications	Year	New Applications
1900.....	267	1908.....	252
1901.....	251	1909.....	340
1902.....	218	1910.....	347
1903.....	202	1911.....	381
1904.....	286	1912.....	743
1905.....	310	1913.....	662
1906.....	373	1914.....	655
1907.....	277		

(Note.) The foregoing are new applications only, and at least fifty per cent. of the old applicants which would be about 800 who apply each year.

3. The number of pardons and commutations granted or refused in each of the said years:

Year	Granted	Refused	Respites
1900.....	41		2
1901.....	47		3
1902.....	44		2
1903.....	48		6
1904.....	46	From	1
1905.....	66	200	1
1906.....	67	to	3
1907.....	15	400	0
1908.....	14	each	0
1909.....	19	year.	2
1910.....	22		3
1911.....	55		3
1912.....	78		5
1913.....	8		1
1914.....	24		7

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4. The number of applications for pardons and commutations of sentence, respectively, pending and undetermined in the Executive Department on January 1, 1915, was 1,396.

5. The number of applications for pardon and commutation of sentence filed since January 1, 1915, is 160.

6. The number of applications for pardon and commutation of sentence disposed of and the disposition made of them since January 1, 1915, is as follows:

Pardoned . . . . .	5
Commutated . . . . .	8
Respited . . . . .	2
Denied, about . . . . .	20

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The Governor also examines thoroughly all capital cases. The number passed on and denied since 1900 is:

Year	No.
1900 . . . . .	3
1901 . . . . .	7
1902 . . . . .	3
1903 . . . . .	13
1904 . . . . .	8
1905 . . . . .	7
1906 . . . . .	0
1907 . . . . .	8
1908 . . . . .	6
1909 . . . . .	12
1910 . . . . .	12
1911 . . . . .	13
1912 . . . . .	22
1913 . . . . .	13
1914 . . . . .	11
1915, until June 1st. . . . .	7

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All of which is respectfully submitted.

EDWARD SCHOENECK,  
*Lieutenant-Governor and Acting Governor.*

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 13

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JOINT MEETING OF THE GOVERNOR AND OTHER  
STATE OFFICERS AND THE COMMITTEE ON STATE  
FINANCES, REVENUES AND EXPENDITURES, WITH  
HON. FRANK J. GOODNOW, PRESIDENT OF JOHNS  
HOPKINS UNIVERSITY

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SENATE CHAMBER, THE CAPITOL

ALBANY, *June 3, 1915, 2:30 o'clock P. M.*

HON. FREDERICK C. TANNER and HENRY L. STIMSON occupied  
the chairs of their respective committees.

MR. STIMSON.—Will the Committee kindly come to order?  
Gentlemen, we have, as you know, to-day the pleasure of having  
with us Doctor Goodnow, the President of Johns Hopkins Uni-  
versity, of Baltimore. Doctor Goodnow formerly occupied the  
chair of administrative law in Columbia University, in which he  
made a study of the various systems of law not only in this  
country but in other nations, and he has had since then the  
unique experience of being appointed the Constitutional Adviser  
of the New Republic of China. So that his experience ranges  
from the observation of the oldest republic in the Occident to the  
youngest republic in the Orient.

I asked Doctor Goodnow to come before the Committee on Finance primarily in reference to the budget systems which he had observed. For the benefit, Doctor, of carrying out your suggestion that you wish to have this a perfectly informal hearing, I will tell you merely in outline, what has been before the Committee already.

The Committee on State Finances started in with an investigation into the methods of fiscal legislation which are now in use in the State of New York. We examined a number of gentlemen on this subject and, as you doubtless know from your studies, the system here consists of having the departmental estimate coming from the bureaus and different boards which constitute the various branches of the Government of the State of New York, pass through the hands of the Comptroller, under the Law of 1910, and be transmitted by him to the Legislature which then —

Doctor Goodnow.—May I ask, does that law provide that the Comptroller can exercise any supervision over the estimates?

Mr. STIMSON.—Absolutely no. He has no power of revision whatever; he can merely collate these different estimates and transmit them in the same amount in which he receives them to the Legislature. The Legislature then makes up the various appropriation bills and passes them and they are in turn transmitted to the Governor; and, under our Constitution, the Governor has the power to veto items but not reduce items in the appropriation bill. With that, you are doubtless familiar.

With that as its starting point, the Committee have had before it gentlemen who have told it about the various systems of budgets and rudimentary budgets which are in effect in the various cities of New York State. Comptroller Prendergast came before us in regard to the method of New York city; other gentlemen have been before us in regard to the methods employed under charters of cities of the second class. Last week we had Mr. Fitzgerald, the Chairman of the Appropriation Committee of the House of Representatives, who gave us his experience with the methods in the National Congress and made certain recommendations based on his observations there.

I think that covers in substance the subject matter which has been before my Committee. Mr. Tanner will tell you the matters

which have come before his Committee, either now or, if you prefer it, later at your convenience. And we would like to leave the entire matter and method of your progress and what you have to say to you. The Committee, I am sure, will be very glad of your suggestion that you would like to have questions asked.

Doctor Goodnow says that he has not prepared at all to make a formal statement or address to the Committee, but he would like to have questions asked about the various things that he may touch upon. I have given you, perhaps, an outline of what is in our mind. If you desire any more or have any questions I will be glad to answer any questions on our part.

Doctor GOODNOW.—Mr. Chairman, and gentlemen of the committee: The main, practical work that I have done in connection with budget making, was done in connection with the work that was done by the Commission on Economy and Efficiency, that was appointed by President Taft, and we did make a rather detailed examination of budget methods as applied in the Federal government. Now, I should judge from what Mr. Stimson has said as to the methods which are adopted here in the State of New York, that there is no opportunity for any administrative supervision over the estimates that are to go before the Legislature prior to the time that the appropriation acts have been passed. Of course, subsequent to the passage of appropriations the power which the Governor has of vetoing a specific item in the appropriation bill permits him at rather a later date in the proceedings to exercise something in the way of an administrative or an executive supervision. I should not think, however, that that was the proper time for such a supervision to be exercised, and that, as the result of the time when it is exercised, it could not, in the nature of things, be very effective. It cannot be very effective because of the fact that the power of the Governor is confined to cutting out absolutely an item of the bill and unless the appropriations are in great detail he could only exercise the supervision over the expenditures by perhaps cutting out a very large item, which it would be better to have reduced rather than to have cut out entirely.

So that it seems to me that the system that you have here is very little better than the system which has been developed in connection with the estimates of the United States government, where

the President has only, in one instance, the right to exercise anything in the nature of supervision over the estimates, and that is, when the estimates as a whole, are or seem to be in excess of the revenues. In that case alone can he exercise any supervision.

I suppose the Governor is in a somewhat similar position to the President with regard to the exercise of any power of supervision over the estimate, that is, the President, I know and I imagine, I don't know whether I am right in that assumption, the Governor too has no adequate force upon whom he can rely, and that being the case, he cannot exercise a power of supervision with the intelligence, at any rate, that it ought to be exercised.

So that, I think you may say, as I see the situation here, that there is no effective provision made under the system adopted in New York to afford the exercise of an administrative supervision over the estimates. So that the State must rely then, in large measure, upon the work that is done in the Legislature, in the committees, in the same way that Washington has to place reliance upon the work of the committees of Congress. S

I don't know, Mr. Stimson did not mention that, but in the State of New York, I don't know whether all appropriations come up from one committee.

MR. STIMSON.— They do, in the State of New York, unlike the Federal government.

DOCTOR GOODNOW.— Then you can have a birdseye view from —

MR. STIMSON.— The Ways and Means Committee has such a birdseye view.

DOCTOR GOODNOW.— So that the legislative committee work can be exercised more effectually than in Congress.

It seems to me one of the great disadvantages of this method, in the absence of any effective administrative supervision over the estimates, is that in the first place, there is altogether too great an administrative independence, and the tendency of almost every administrative authority which desires to spend money is to magnify the importance of its department and thereby to increase the estimate, very often unduly, and unless the estimate of the separate administrative departments can be brought before one administrative authority, which can cut them down, in view of



the needs of the service generally and also in view of the revenue of the State, this method of making the estimate would seem to me irresistibly to tend towards extravagance.

Mr. STIMSON.—May I interrupt you to ask you a question on what you have just said there?

Doctor GOODNOW.—Certainly.

Mr. STIMSON.—Have you considered whether or not there would be any advantage, assuming that the estimates were to be revised, either by the executive branch of the government before they went to the Legislature or afterwards by the Legislature itself, in a central committee, have you considered at all the advantages or disadvantages which those two branches of the government would have in this particular duty of cutting down the estimate, arising out of any superior information which one might have of the activities of the government?

Doctor GOODNOW.—Certainly, the Governor, if he were given the necessary assistance, part of which would have to be technical in character, would be at a very much greater advantage in this matter than the Legislature could be. Merely as a result of being in control of the administrative system of the State, the Governor can know more about it than the ordinary committee of the Legislature could be expected to know; and, as a result of his knowledge of the needs of a particular department, as a result of his knowledge of the revenue that is available, it would be my opinion that that supervision can be exercised much more intelligently. And I think we find in most governments which have been forced, as the result of the demands that are made upon them, to adopt ways which will favor economy, that there always is provided some method for an administrative supervision of the estimates before they go to the Legislature. I think you have noticed that. I am more familiar with the British system and their practice—well, all the important expenditures have to be approved by the treasury and they do not go up before the Legislature until there has been an agreement reached between the department asking for the money and the treasury as to the amount which will be granted for particular purposes of expenditures.

Mr. STIMSON.—That particular phase of the matter has not been before us, Doctor Goodnow. If you care to go into it in greater detail, I am sure the Committee would appreciate it.

Doctor GOODNOW.—As I understand the British system, all expenditures, except military expenditures, have to receive the consent of the treasury, all estimates, before they go up. The military-naval expenditures are estimated for with a somewhat greater independence by the War Department and the Admiralty than are the civil estimates, but even they cannot go up to Parliament until they have received the assent of the Cabinet. It has been felt, particularly with regard to naval estimates, that it would be inadvisable to submit them to the same control, to the exercise upon the part of the treasury that the ordinary civil estimates are. But, in all cases, in the case of a civil estimate, the supervision is exercised by the treasury. In the exercise of military and naval estimates, the administrative supervision is exercised by the Cabinet, and they have before them the needs of the different branches of the service, the needs of the country as a whole, and they have also before them the probable revenue; and, in view of a consideration of those factors, they come to the conclusion that such and such items are to be submitted to Parliament.

Mr. STIMSON.—When you say the civil estimates are supervised by the treasury, through what officer is that done? Who represents the treasury?

Doctor GOODNOW.—They have a particular bureau; quite a staff of officials whose duty it is to supervise those estimates before they can come up. There is this official organization provided for that in the treasury, which not only has charge of the estimates in general, but which also has general charge of the salaries that are to be paid to different classes and clerks, and classifies the clerks and fixes in particular departments clerks of certain classes and a certain number of them.

Mr. STIMSON.—Is this special organization that you speak of, are they subordinates of the Chancellor of the Exchequer?

Doctor GOODNOW.—Yes, sir. He is the head.

Mr. STIMSON.—And he is a member of the Cabinet?

Doctor GOODNOW.—Yes, sir; he is a member of the Cabinet.

Mr. DICK.—He is also a member of the House of Commons?

Doctor GOODNOW.—Yes, sir.

Mr. DICK.—All Cabinet officers are members of the House of Commons?

Doctor GOODNOW.—Either the House of Commons or the House of Lords.

The same thing occurs in Canada, but the supervision is exercised there more by the Cabinet as a whole, and the estimates have to be decided on by the Cabinet as a whole, before being submitted to Parliament.

As I was saying, that seems to prevent the undue development of extravagance, through perfectly proper motives, through the heads of departments. Each head of department wants to extend his department, and naturally is apt to overestimate the importance of that particular branch of their work, and this check, through an efficient and effective administrative supervision, has been of value in keeping the estimates down, and also in keeping them within the revenue which is available.

There is another reason why it seems to me that there ought to be a provision for an administrative supervision of the estimates, and that is to prevent a thing that a popular government seems to be liable to, wherever you find it, and particularly where, as is usually the case, the representatives in the Legislature represent local districts. That is, there is an irresistible tendency, which is to my mind one of the most dangerous tendencies of popular government towards useless expenditures in localities for the purpose of influencing locally the influence and standing of the representative in the Legislature. There is not any use enlarging upon it. Any of you men who have been members of the Legislature know what pressure is brought to bear, and how difficult it is to resist; but if you are looking at the general question of popular government, as you are, and you must in the Constitutional Convention, from the point of view of necessity, if popular government is to continue, as it has, as to the guarding against the evils which are apparently inevitable, it seems to me

that it is necessary to provide some offset to this tendency, and that can be secured, it seems to me, only by having the estimates determined upon before they are submitted to the Legislature, by somebody who is representative, not of this locality or of that locality, but who is representative of the State as a whole. And, therefore, it seems to be an absolute necessity, if we are to keep down the expenditures of the State government, which are increasing at such a tremendously rapid rate, we must provide, in the first place, to check the tendency of administrative bodies towards magnifying their importance, and secondly, to check the tendency of localities to demand the expenditure of State money for local purposes, and purposes which are not consistent with the interests of the general State as a whole.

Mr. STIMSON.— May I ask a question there?

Doctor GOODNOW.— Certainly.

Mr. STIMSON.— Mr. Dick asked you a question in reference to the membership of the man who exercised that scrutiny in the Cabinet in England. They have membership simultaneously in the Legislature. What I want to ask you in reference to that is, does that scrutiny, as Cabinet officers, at all take the place of the subsequent scrutiny in Parliament?

Doctor GOODNOW.— No.

Mr. STIMSON.— Or is it done purely in their capacity as executive officers for the time being?

Doctor GOODNOW.— It is purely done in their capacity as executive officers, and, of course, those estimates, after they have been scrutinized in that way by the administration, then they are submitted to Parliament, and have to go through considerable scrutiny there.

Mr. STIMSON.— Then they go through the legislative scrutiny?

Doctor GOODNOW.— Yes, sir.

Mr. DICK.— Has Parliament the right to increase that?

Doctor GOODNOW.— You remember what one man said about Parliament: "Parliament can do everything except make a man a woman." Parliament has power to increase the estimates. But

the House of Commons adopted about one hundred and fifty years ago —

Mr. STIMSON.— Seventeen hundred and thirteen, I think.

Doctor GOODNOW.— Yes.

Mr. STIMSON.— Two hundred and two years ago.

Doctor GOODNOW.— Yes. A rule which makes out of order any proposal for the expenditures of money which does not come from the Crown, and they live up to that, so that the estimates are not raised. And apropos of that, in the British North American Act of 1857, which is practically the constitution of the Dominion of Canada, they have incorporated a provision which is modelled on that rule of order of 1713, and when I was called upon, as I was, to draft a constitution for China — which, by the way, was not adopted — I endeavored to modify that rule in such a way as to be applicable to the conditions there, and I think it would be applicable to the conditions here. I drafted it as follows:

“ That it shall not be lawful for the Senate or House of Representatives to adopt or pass any vote, resolution or bill for the appropriation of any part of the public revenue, or of any tax to any purpose that has not been first recommended to that house by message of the President, in the session in which such vote, resolution or bill is proposed; nor shall it be lawful for either the Senate or House of Representatives to increase the amount recommended to that house by the President to be appropriated for any purpose.”

And practically in every English speaking country, except the United States, a rule of that sort has been adopted, in order to prevent this practice which we have come to call “ log rolling ” in this country, by means of which different representatives will agree to vote for each other’s appropriations if the others will vote for theirs. That is the only practical way which so far has been developed by English speaking people to prevent this dangerous tendency of all popular government.

¶ I don’t know as I have anything more to say, Mr. Chairman. Those are the principal points I had in mind. The necessity of administrative supervision over the estimates, and the desirability, if not the necessity of limiting the Legislature after the estimates

have come, to cutting the estimate down or preventing them from increasing it. }

Mr. BEACH.—Can you state how many changes of executives take place when there is a change in administration, under the English government?

Doctor GOODNOW.—I cannot tell you in actual numbers. My impression is that, including the officers of the household, there are not more than one hundred. About one hundred counting the heads of departments and then the officers of the household. There are comparatively few. The secretaries and the political under secretaries are about the only ones.

Mr. STIMSON.—That provision which you read from your draft of the constitution of China, is that substantially the same as the provision in the constitution of Canada?

Doctor GOODNOW.—Substantially, yes. It goes into a little more detail.

Mr. STIMSON.—Of course it mentions the President instead of the Premier?

Doctor GOODNOW.—Yes.

Mr. PELLETREAU.—What are the advantages of the English system of the members of the Cabinet being likewise members of the House of Commons or of the House of Lords?

Doctor GOODNOW.—Of course the advantage then is that they are always present in the Legislature, or may be present in the Legislature, when any important matter comes up. And, inasmuch as the English system is really a system in accordance with which the initiative is given to the administration and the Legislature is merely to exercise a controlling influence, why, it is necessary, of course, it is only fair, to give to the Cabinet, which has the initiative plan, the right to support it in the Legislature.

Mr. STIMSON.—Will you describe how that is done; what the proceedings are when the budget is introduced in the House of Commons?

Doctor GOODNOW.—Well, I can do it only in a very general way.

Mr. STIMSON.—There is a personal interrogation of the opponents?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—By the House itself?

Doctor GOODNOW.—Yes, sir; and that does not go before any special committee, but it goes before a committee of the whole House and any member of the House may attend and there is considerable interrogation upon the part of the opponents of any particular measure, and often there is quite an influence exercised over items of the appropriation by the opponents of the government. If, however, the opponents of the government insist upon making too great changes, changes which the Cabinet could not consent to, why that, of course, would result in an overthrow of the Cabinet and a change of the government.

Mr. STIMSON.—There is a pretty full debate, isn't there, on the issue of the adequacy of the budget?

Doctor GOODNOW.—Yes, sir. That is, in the Committee of the Whole.

Mr. STIMSON.—I mean the practice is to make a motion to reduce and test it in that way?

Doctor GOODNOW.—Yes. That would be done by the opposition, if they think there is any chance of throwing the government out.

Mr. STIMSON.—Isn't it also the practice to interrogate the heads of the respective departments when their portions of the budget come up?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—By the opposition?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—To subject them to examination?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—Personally?

Doctor GOODNOW.— But I think, of course, there — take it in our government, in the Federal government, and I think in the State, the estimates run, under present practice we will consider — that is, I know in the Federal government almost everybody puts in an estimate much larger than he expects to get, because, as a general principle, they are going to be cut down.

Mr. STIMSON.— That was the testimony as to what was done here?

Doctor GOODNOW.— Yes.

Mr. STIMSON.— The witnesses have told us that they are uniformly so high that the Legislature began over again with little regard to the aggregate of the estimates submitted.

Doctor GOODNOW.— I do not think that is true in Great Britain. The attempt there is to make the estimate nearer what is absolutely necessary. Of course, there may be debatable items upon which money might or might not be spent, but, as a general thing, the estimates are a serious attempt to find out what the needs of the administration are, and in this country they are not.

Mr. STIMSON.— The estimates, when they are submitted, after this Cabinet revision in Great Britain, present an issue which the government is ready to stand on.

Doctor GOODNOW.— Yes, sir.

Mr. STIMSON.— They do not expect it to be cut down?

Doctor GOODNOW.— No, sir; and if they should be cut down the government would resign.

Mr. STIMSON.— They present a subject for real debate?

Doctor GOODNOW.— Yes, sir.

Mr. TANNER.— You have mentioned what would be a force assisting the government, for the purpose of assisting the Governor, in making up this estimate. What is your idea as to the composition of that Board? Would it be heads of the departments? Would it be men who in the Federal government would be Cabinet members, or who?



Doctor GOODNOW.— I think the heads of departments certainly ought to meet with the Governor. It might be necessary for the Governor to have a staff somewhat similar to the staff which the Board of Estimate and Apportionment of New York City has, in order to consider a great many of the items intelligently. You would have to have, of course, organized that staff in accordance with the needs of the service here, but I think there is a pretty good model for a staff of that sort to be found in the staff attached to the Board of Estimate and Apportionment of New York City. There would have to be something of that sort in order to have the administrative supervision as serious and effective as it ought to be.

Mr. WAGNER.— If you had that sort of department, wouldn't you simply transfer the log rolling to that board rather than to the Legislature, because they would all be department heads who would be interested in large appropriations for their departments?

Doctor GOODNOW.— I say that you would have to have something in addition to that.

Mr. WAGNER.— Wouldn't it be better to have the English system, of four subordinate investigators?

Doctor GOODNOW.— You would have to have that, but I think the Governor could exercise a better supervision if he could meet with the heads of departments and then I think he ought to have the power to determine whether estimates should go in finally.

Mr. WAGNER.— Would you include in that administrative supervision the requests of other State elected officials, who, under our theory, are to be independent officials?

Doctor GOODNOW.— Yes. Unless you do that I do not think you can — take, for example the State Engineer and the Surveyor, if he is going to expend a great amount of money in public works, that is a very important thing, I think, to be subjected to the control of the government.

Mr. TANNER.— As a matter of practice, Doctor, in the Federal government, where the heads of departments are appointed, doesn't the President give the head of department some idea as to a point

beyond which he cannot go? Isn't that the way it is really worked out?

Doctor GOODNOW.—Well, I don't think it has been until recently, because we have never had the necessity in the Federal government of saving money. That is, our revenues have come in as a result of the collection of taxes which have not been imposed for fiscal purposes. They have been imposed,—a protective tariff, for example, has been imposed, not to bring in money particularly, but for other purposes; and, as you know, in the history of the country, sometimes a great issue has been the disposition of a surplus and it has only been in recent years where it has come to the point where it has been necessary for the President to exercise any particular supervision, and as the law stands at the present time he can not, except under his constitutional powers, control the estimates that are to go in at times.

Mr. NICOLL.—Did you state to what extent the estimates are itemized under the English system?

Doctor GOODNOW.—They are not itemized nearly as much as our estimates are; that is, not on the face of them, but they refer to certain schedules which do go into a considerable detail, but the schedules are not regarded so much as an itemized appropriation that is controlling; and it would be regarded as proper to transfer balances from unexpended items to items where the expenditure might be more desirable. That is, they have adopted more over there the system that has been adopted in some of the departments of the Federal government, which is called there the lump fund appropriation.

Mr. STIMSON.—In regard to Mr. Tanner's question, really the first attempt made by any President to regulate the estimates was done at the time you were on that committee of economy and efficiency?

Doctor GOODNOW.—Yes; under Mr. Taft; under an act of 1908.

Mr. STIMSON.—Nineteen hundred and nine, I think, to be exact.

Doctor GOODNOW.—Was it 1909?

Mr. STIMSON.—Yes.

Doctor GOODNOW.—That act provided that the President should have the right to reduce the estimate, or to send in to Congress suggestions as to reductions of the estimates or to provide for new revenue. But, as Mr. Taft said when he was here, he had not any force which he could use to make an intelligent reduction, and that all he could provide for was simply a flat 10 per cent. reduction right along the whole line. He knew perfectly well it was not proper in certain cases and it might do hardship in certain cases, and it might be not enough in others.

Mr. STIMSON.—You mean by that he virtually sent word to each of the department heads that they had to get their estimates down — cut them down 10 per cent.?

Doctor GOODNOW.—Yes.

Mr. LINCOLN.—What does the House of Lords have to do with estimates?

Doctor GOODNOW.—Nothing, since 1911.

Mr. LINCOLN.—Can you suggest any means of overcoming possible conflict between the Senate and the Assembly, or the other house, in connection with budget making?

Doctor GOODNOW.—Nothing, except by adopting a somewhat similar provision to the provision that was adopted in the Parliament Act of 1911, which provides that if the House of Lords does not approve of a bill within a month after it comes before it, then it shall go through as law without the consent of the House of Lords, unless the House of Commons otherwise directs. That was passed as the result of that struggle about the Lloyd George budget. The Parliament Act of 1911 practically did away with the financial powers of the House of Lords.

Mr. STIMSON.—Doctor Goodnow, I have sent out for those provisions of the rules of order in the House of Commons and of the Parliament in Canada. (Handing certain papers to the witness.)

Doctor GOODNOW (reading.)—The rule of the House of Commons is that “the House will receive no petition for any sum relating to public service, or proceed upon any line for a grant or charge upon the public revenue unless recommended by the Crown;” and the Act of 1867 for the Dominion of Canada, it reads:

“It shall not be lawful for the House of Commons to adopt or pass any vote, resolution or address, or bill, for the appropriation of any part of the public revenue, or of any tax or imposts for any purpose that has not been first recommended to that House by a message of the Governor General in the session in which such vote, resolution, address or bill is proposed.”

Of course, you see the House of Commons did not consider — way back in 1713 — that that was a violation of its prerogative; it was a self-denying ordinance. It simply saw the necessity of something of that sort and said, “We will not vote any money except as proposed to it by the persons who are responsible for the expenditure of money.”

Mr. STIMSON.—That has been lived up to inviolately ever since?

Doctor GOODNOW.—Yes, sir.

Mr. STIMSON.—For 200 years?

Doctor GOODNOW.—For 200 years.

Mr. AUSTIN.—Doctor, if I may ask you a question, I want to say that the system of an executive budget appeals to me as being good. So far as the State of New York is concerned, there is only one difficulty in the way, according to my mind, and that arises from this situation: It seems to me that — of course, a budget to be of any real use, must be made up by a person having knowledge of the facts. In Great Britain I think it is a fact that a Cabinet, when there is a change of government, is nearly always made up of persons who have been connected with governmental affairs, and, whatever their political affiliations may be, they are familiar with the needs of government so far as its maintenance is concerned. In this State we all know that every two years we have a change of government, and very frequently

the Executive — I think in the majority of cases — the Executive who is elected is a man, while of great prominence, may not necessarily have any real knowledge of the needs of the government from a financial standpoint. He must necessarily submit his first estimate within, say, sixty days to the Legislature which comes in. Can he, for his first estimate, be possessed of sufficient knowledge to present a proper estimate of the State's needs?

Doctor GOODNOW.— Well, no.

Mr. AUSTIN.— Well, on the other hand, under our present system, these bills originating in the appropriation committees where there is a change of politics, the chairman of the Finance Committee of the Senate and of the Ways and Means Committee of the Assembly, although he comes from a different political party from that which just went out, is nearly always a man who has been upon those committees and has served a number of years and is somewhat familiar with the needs of the government. Do you think that constantly changing government would have any effect upon the efficacy of an executive budget system?

Doctor GOODNOW.— It would, unless there were gradually developed as I think there necessarily would be, about the Governor, or subordinate to the Governor, a force which would tell him what should be done in the way of trimming down the estimates.

I don't know as you know the condition of things down in Washington, but if Mr. Cortes, who is the clerk of the Committee on Appropriations, were not there, that Committee would not do very much business. He has been there for twenty years, I think, and he knows the whole thing from A to Z, and he can give that committee information which no other person probably living could give them. I think the tendency would be here in the State for the development, if this scheme were adopted, of something in the nature of a permanent service, just out of the very necessity of things, that would help the Governor in the performance of his duties. Records would be kept which would show what had been the appropriations during a series of years preceding, or to show what had been the expenditures of those departments during the years preceding, and so on, so there would be accumulated

very soon a vast mass of information which would help the Governor and he would also have the help of those people. And those people, I think would necessarily have permanent positions. Even under our system of changing officers pretty frequently we know that in almost every department there is some man who is the wheel horse of the party who stays there no matter what may be the political power.

MR. STIMSON.— That is true of Mr. Fitzgerald's work.

DOCTOR GOODNOW.— Yes.

MR. STIMSON.— Mr. Cortes knows more about appropriations even than Mr. Fitzgerald?

DOCTOR GOODNOW.— Yes. He has been there longer.

MR. AUSTIN.— The point I was getting at, is, if you established a budget system, it would seem to me that some permanent investigatory body is necessary?

DOCTOR GOODNOW.— Yes.

MR. AUSTIN.— Without that it would be useless, not necessarily useless, but its usefulness would be greatly diminished?

DOCTOR GOODNOW.— The same thing is true in New York in the Board of Estimate and Apportionment. In the case of a new election where the party is changed, the body is completely changed, but there is there a permanent staff that helps them to deal intelligently with the estimates that come up from the various departments.

MR. STIMSON.— It would be helpful if the Governor's term were four years instead of two?

DOCTOR GOODNOW.— Yes.

MR. STIMSON.— That would be a step in the direction of better budget making?

DOCTOR GOODNOW.— Yes, it would.

MR. TANNER.— The Committee on Governor and Other State Officers have confined themselves up to this point to studying

the executive branch of the government as it is and have not made any recommendations. The facts have been developed that the executive branch of the government to-day is made up of over one hundred and fifty departments, boards and commissions. The Committee has been studying the subject of co-ordinating and placing in one group the various committees and boards whose functions are similar and properly belong together. From your experience in administrative law, we would be very glad to have you make any suggestions, either from your knowledge of the government of this State, or by analogy with other States or Canada or England. In fact, we do not wish to place any limit on you at all.

Doctor GOODNOW.—Mr. Chairman, I did not suppose that there was any man that was rash enough to advocate the administrative organization of New York as it at present exists, as it never was developed consciously upon the part of the State. It has been a long historical development, and the attempt has been made, as I have read the history of the State, to meet each particular need that presented itself by an organization, which, unfortunately, in a great many instances, bore no relation to the existing organization.

Now, if we go back over the history of the State, we find that the idea of electing by the people as a whole of the administrative officers of the government, that was not originally the idea which the framers of the early constitution of the State of New York had in mind. Almost all officers of the early State Constitution were appointed by the Governor, by and with the advice and consent of, in the first instance, the council of appointment, which was a council consisting of four senators, and later by and with the advice and consent of the Senate. And it was only in 1846 that the State adopted in any very large measure the idea of popularly elected State officers. The men in the State offices that were in existence at that time were to be elected by the people as a whole. If we look at the history of the State since then, I do not think that we can come to the conclusion that method of popularly elected State officers has approved itself to the people of this State, because practically every new officer for whom provision has been made since those days of 1846, since that great

democratic movement — I mean democratic in the sense of popular government — that movement, nearly every officer for which provision has been made has been appointed by the Governor, either alone or by the Governor by and with the consent and advice of the Senate; and up to this time there has been no serious attempt made to provide that these popularly elected officers, as provided for by the Constitution of 1846, shall be appointed by the Governor, but it is rather remarkable if you go through it — every single officer for which provision has been made since then, is to be appointed by the Governor by and with the advice and consent of the Senate, or by the Governor alone.

Mr. TANNER.— Practically all those additional officers, with the exception of the Superintendent of Public Works and the Superintendent of Prisons, who are constitutional officers, were added by the Legislature?

Doctor GOODNOW.— Yes, they have been added by the Legislature.

Now, one of the results then of this peculiar development, where you have, on the one hand, officers elected by the people of the State as a whole, and on the other hand a great majority of officers appointed by the Governor, either alone or by the Governor and the Senate, has been this, that somewhere the people have not, or the Legislature, or the people of the State have not been willing to entrust a great many of the new functions of government which have been developed within the last forty or fifty years to their popularly elected officers. It looks as if they have not felt that they did get an efficient government by popularly elected officers, and that they had, where those new functions of government have come up, made purposely provision that those people should be appointed by the Governor, thinking that that would give them a better government.

Of course, having this dual system in your government, you have a good many instances where certain officers have been duplicated, functions of certain officers have overlapped the functions of others, and the condition at the present time, I think, is pretty chaotic in this State.

Another thing that has happened which I think has been unfortunate is that there has been no attempt made in this new



administrative organization that has developed since 1846, to co-ordinate similar functions in one department, such as we have for example at Washington. But you have one board for this little thing, another officer for another little thing, and so on through the line.

That, to my mind has great disadvantages. The most important things that occur to me are these: In the first place there is a great lack of efficiency, a great tendency toward extravagance by the recognition of so many absolutely independent bodies. Take the National government for example, as compared with this government of the State of New York, a government vastly greater in the extent of its functions and vastly greater so far as the amount of money is concerned which is spent, and there are only, I think, nine different departments at the present time, and very few independent bodies outside of those departments. You can count them up on the fingers of your hands, independent bodies like the Civil Service Commission, the Interstate Commerce Commission, the Trades Commissions, etc., and the bodies, in a great many instances, like the Interstate Commerce Commission are not administrative bodies; but in the Federal government attempt has been made, not always as successful as it might have been, to group all those various services that must be carried on under the administrative supervision, under some one head of department, who is usually a Cabinet officer.

That has a big advantage over this system that has gradually grown up in the State government, because it prevents again what I have referred to, the development of this idea of departmental importance. There is a superior, there is an administration control and supervision over most of these services. Say, for example, important service, like the cost of geodetic and light house service, they are all subject to the administrative supervision of the Secretary of Commerce, and the tendency of his having supervision is to check extravagance on their part.

In the second place the disadvantage of this scheme is with the State of New York as it is, it is very difficult for a permanent service to develop in this State. If you take in the United States government the tendency within the last twenty-five years has been that the heads of these services which are governed by bureaus, in the different departments, the tendency of the heads

of those services is to become permanent without any particular provision of law, and the political control there must necessarily be exercised over them, if the government of the country is to be popular; that is, exercised by the heads of departments, the members of the Cabinet change with the administration but there is no longer the same tendency for a change all the way through the line as there was in the old days. I think the same thing would happen here, without any particular provision of law, if you put these various one hundred and fifty officers,—if you attempt to group them in accordance with the character of the function—under some head of department; then if you provide, say, if there were Commissioners placed at the head of them, if you provide no fixed term for the Commissioner, but provide merely that the Commissioner was to be appointed by the Governor and could be removed by the Governor at any time, I think you would find that the tendency pretty soon would be for most of those to become permanent in character, certainly much more permanent than they are at the present time. That, I think, would vastly increase the efficiency of the government. So that, on the one hand, you would save through the administrative supervision the tendency toward extravagance and toward the magnifying of those various little departments, and I think the tendency would be to secure something in the nature of a permanent service, which, of course, would increase the efficiency.

MR. WAGNER.—Doctor, I think you will find in our different departments, the heads of which are elected by the people, a permanence in the bureaus within those particular departments.

Doctor GOODNOW.—Yes.

MR. WAGNER.—They have been in the State service for a good many years, irrespective of their political complexion.

Doctor GOODNOW.—I was not thinking so much of whether you had those people elected or not. I don't know, I don't think anyone would care to speak about increasing the elective offices. But I was thinking that if you grouped them together at the present time, grouped the cognate offices together at the present time with a well organized department with a political head at the head of them, you would not find the commissioners, who

would correspond to the present heads, would change as much as now.

Mr. WAGNER.— I want to suggest that you stated a moment ago the fact that these new functions of government created in a particular manner in our State, in which a new department was created, and the head was made an appointed officer, rather than having elective officers, was due to a mistrust by the legislative bodies, in the efficiency of elected officials. I do not think, Doctor, conceding your superior ability and knowledge as compared with mine —

Doctor GOODNOW.— No, that is only my guess, that is all.

Mr. WAGNER.— I think it is due to a great extent to the fact that most of those reforms have been advocated by Governors, and they have never been quite willing, having advocated the reform, to give up to the whole people the selection of the head of that department, and there has been, even among the Governors, a desire to control, and perhaps their motives were perfectly good, they thought they were in better position to select the head of that department than the people themselves would be, but I think it is due to the desire of the Governor to control that department, especially its heads, that has made those officials appointive, because without his approval the legislation could not be enacted.

Doctor GOODNOW.— Whenever the people have had the opportunity in the amendment of the Constitution, they have not attempted to change it at all.

Mr. WAGNER.— No.

Doctor GOODNOW.— That is since 1846, you may say, there has been no demand upon the part of the people of the State of New York for an increase in the number of elected State officials, roughly speaking.

Mr. WAGNER.— Yes.

Doctor GOODNOW.— What that is due to, is anybody's guess. I rather think that they are more efficient.

Mr. STIMSON.— Was there some situation at the time in respect to the Superintendent of Public Works which bore on that?

Doctor GOODNOW.—I don't know how the Canal Board was organized. As I remember, there were a great many elected officers on it, and there had developed a great deal of scandal in connection with the management of the canal. The result of those scandals was that the people of the State of New York said, "We are not going to be bothered with a great number of elected officers, we are going to concentrate upon the Governor," and they provided for the Superintendent of Public Works. And the same thing, I think, as to the Superintendent of Prisons. I am not certain whether that is in the Constitution or is dependent upon this State, but there has been a reaction against popular elected State officers since 1846. But that would not have anything to do with the desirability of the rearrangement of those 150 separate boards and organizations that we find at the present time.

Mr. TANNER.—It is true that there has been a constantly increasing number of boards and commissions arising from the action of the Legislature.

Doctor GOODNOW.—Yes.

Mr. TANNER.—It has never receded any, but it has always increased.

Doctor GOODNOW.—Roughly speaking, I should say that is true.

Mr. TANNER.—If that is true, and a clear line of demarcation is made between those various departments, so that there is this grouping that you refer to, into a very large department, would it be necessary for some provision to be inserted in the Constitution that any subsequent board or body created by the Legislature will have to fall into one of those departments? Otherwise you will have the same situation that you have to-day.

Doctor GOODNOW.—Yes.

Mr. TANNER.—You will start over again and build up by accretion?

Doctor GOODNOW.—Yes. In some States that has been carried even farther. That is, the Constitutions of some of the States

have prohibited the Legislature from establishing any new officer — any new State office.

Mr. TANNER.— Isn't that pretty drastic?

Doctor GOODNOW.— Yes. I don't think you could go that far. You cannot see far enough ahead. There may be new matter that may have to be taken into the State administration, and I think the method you have mentioned would be the method that would meet the particular situation that you find here in New York.

Mr. BOCKES.— If your system were adopted, do you think the people would have the same interest in coming out to elections and watching the party in power that they have now?

Doctor GOODNOW.— I think they would have more. If you should concentrate their attention on a very few. I think the trouble now with the ordinary voter is: "I don't know what is going to be the influence of my vote." If you could concentrate the thing on the Governor I think you would get a greater interest.

Mr. BOCKES.— Then you would have the people voting in regard to their choice of men rather than upon their choice as to parties? That is, for instance, my father taught me that it was my business to watch the party in power, and if it did not do its duty to the people, help to put it out and send the other one in. I could not, under your system, teach my children that same system of government.

Doctor GOODNOW.— How would you do with regard to the President of the United States? Is there not more interest with regard to the President of the United States? Now we concentrate our attention on him. Doesn't he mean something more to us than the Governor does in the State of New York?

Mr. BOCKES.— Not as a person, but as the representative of a party.

Doctor GOODNOW.— That is exactly what I mean. You do not diminish the influence of party; it will, rather, increase the influence of party by having the members of the party and the citizens as a whole know what it is going to mean.

Mr. BOCKES.— That is true where he is subject to a party convention control, but in this State we have done away with conventions, so that our Governor is simply a man and has not even the advice of a party any more.

Doctor GOODNOW.— He will have it pretty soon. I do not believe that you have done away with parties at all.

Mr. BANNISTER.— Doctor Goodnow, how many choices are ever given to the English elector? Isn't he practically confined to voting for one or two men?

Doctor GOODNOW.— The only choice that any particular elector has at any parliamentary election is to vote for one, unless he —

Mr. STIMSON.— He sometimes has votes, in two or three localities?

Doctor GOODNOW.— Yes.

Mr. BANNISTER.— Is there any doubt that the government of England is more democratic than our own?

Doctor GOODNOW.— It is more responsive of their opinion than our own.

Mr. BANNISTER.— That is what I mean by democratic?

Doctor GOODNOW.— Yes.

Mr. BANNISTER.— If the electors of England want anything can't they get it quicker than we can?

Doctor GOODNOW.— Yes; I think they do ordinarily.

Mr. BOCKES.— One more question I want to ask with regard to the first part of your remarks. Are there any states in the Union now where the executive, or appointees of the executive or Board of Estimate originates bills for raising revenue, and still retain in the executive the power of veto?

Doctor GOODNOW.— Well, my remarks were confined more to the estimates of expenditures than to revenue, but in a number of states there is provision made for this sending out of the estimates by the Governor. The only trouble with the method as worked out in actual practice, is that inasmuch as the Governor is not

provided with a force to help him, his duty of sending in the estimate is very perfunctorily performed. That is, he simply gets the estimates from the different administrative officers and passes them along, and he does in those states have a veto power.

Mr. BOCKES.—The Legislature is not under constitutional restriction from raising his estimate if it wants to in any particular?

Doctor GOODNOW.—No; I don't know of any State in the Union where that is the case. But that is quite common in the cities of this country.

Mr. BOCKES.—It has been so, yes.

Mr. WAGNER.—If we wanted to make our system analogous to the English system we would give that power of inquiry into requests for appropriations to our State Comptroller, wouldn't we?

Doctor GOODNOW.—You mean the power of supervision over the estimates?

Mr. WAGNER.—Yes; the power of supervision over the estimates before the estimates are transmitted to the Legislature. The power of making a thorough investigation as to their needs and requirements.

Doctor GOODNOW.—He might be made use of by the Governor, but I think it would be unfortunate not to concentrate that power in the Governor because the Governor is the man, more than anyone else, who is in the public eye. He is more responsible, feels a greater sense of responsibility, I think, and the people regard him as more responsible than any other officer in the government.

Mr. WAGNER.—My mind is open on the point, but this suggestion came to me, I thought by that we perhaps would have the advantage of having really two investigations.

Doctor GOODNOW.—I think there is a great advantage. I think that is what is done in Russia at the present time. That is, the Board of Audit works on the estimates before they come before the Legislature. I was talking with a Russian about it and he said it was a very great advantage, because by auditing the accounts they get all that familiarity with the departments, with

any practice that were to be deprecated in the departments, and they called the attention of the persons who drew up the estimates to those practices and had them corrected. He thought it was a very valuable thing, and that would be in line with your suggestion.

Mr. STIMSON.— That is done in our cities now. The Comptroller of the city, who is the auditing officer of the city, has the same power and is used, I know, in making up the budget for New York City, in preparing the estimates.

Mr. WAGNER.— They have a standing committee, haven't they, in the Board of Estimate, a budget committee, haven't they?

Doctor GOODNOW.— Yes.

Mr. STIMSON.— They have in the City of New York, for instance, a series of expert accountants, under the Mayor, known as the Commissioners of Accounts, and then in addition to them they use also the subordinates in the Comptroller's office.

Mr. WAGNER.— I do not think the Commissioner of Accounts has anything to do with the making up of the appropriations.

Mr. STIMSON.— I understood from Mr. Prendergast that they assisted the Mayor in it.

Mr. WAGNER.— I thought they had created a special budget committee in the Board of Estimate.

Doctor GOODNOW.— There is a budget committee and there is a regular force of engineers, accountants, etc.

Mr. WAGNER.— That is under that committee, isn't it?

Doctor GOODNOW.— Yes.

Mr. WAGNER.— Under that budget committee, that is what I mean?

Doctor GOODNOW.— Yes.

Mr. STIMSON.— Do you see any objection to their having help in the shape of experts' help to assist wherever authorities actually get up the budget?

Doctor GOODNOW.— They ought to have it.



Mr. STIMSON.— They ought to have it?

Doctor GOODNOW.— They ought to have experts' help.

Mr. STIMSON.— In other words, the people upon whom you would impose the responsibility of revising the estimate ought to be given the expert help necessary to assist them to do it?

Doctor GOODNOW.— Yes. I don't think an administrative supervision without that would be effective.

Mr. TANNER.— Relative to the power of the Governor to veto an item in an appropriation bill, what should be his power as to reducing an item?

Doctor GOODNOW.— I think you are getting at it in the wrong way, putting the cart before the horse. That is, if the Governor had the administrative supervision of estimates then if the Legislature would do what the House of Commons has done, or if the Constitutional Convention would do it for them, that is, prevent them from increasing these estimates, then there would not be any necessity for any veto of items, would there?

Mr. TANNER.— Suppose the Governor makes his budget and the Legislature adopts that, he sees there that a mistake has been made, he has no power to do anything about it unless he can reduce an item?

Doctor GOODNOW.— As I understand it an appropriation is seldom regarded as mandatory. An appropriation is rather a recommendation.

Mr. TANNER.— When did a department send back any amount of money that had been appropriated?

Doctor GOODNOW.— Quite a number of them have.

Mr. WAGNER.— There are many of them.

Mr. STIMSON.— Many departments do it every year.

Mr. TANNER.— Is that in any considerable amount, Senator?

Mr. WAGNER.— Yes. Our reappropriations this year amounted to nearly two millions of dollars and they have lasted two years and have not been spent in two years because the appropriation is not needed until a lapse of two years.

Doctor GOODNOW.— Of course, you are right, Mr. Tanner, that if you keep this system that you now have it would be a desirable thing for the Governor to have the power not only to cut out an item but to reduce it if he saw fit.

Mr. TANNER.— I think so. I was just asking if the power were carried further if there would still not be some advantage in his having the right to reduce. I do not see what harm it could do, and it might do some good.

Doctor GOODNOW.— Yes.

Mr. STIMSON.— There would be no assumption that the power would always remain as now.

Doctor GOODNOW.— No.

Mr. STIMSON.— And that is the system you characterize as the cart before the horse?

Doctor GOODNOW.— Yes.

Mr. STIMSON.— Isn't it a little worse than that? Doesn't that system amount to turning over to the Governor the real legislative power of the State in the control of the purse?

Doctor GOODNOW.— Of course, it is totally contrary to the historical development of the English idea with regard to it. The English idea was not so much that the Legislature or House of Commons was opposed to it, but it was to prevent the King from spending too much.

Mr. STIMSON.— In other words, the centuries-long fight for the control of the purse was in order that the people's representatives in the Legislature should have the say of how much money should be spent.

Doctor GOODNOW.— Yes.

Mr. STIMSON.— And this system which we are drifting into, is that the Legislature pass appropriations which we know are too large and let the Governor cut them down?

Doctor GOODNOW.— Yes.

Mr. STIMSON.— That is giving the power of the purse, isn't it?

Doctor GOODNOW.— That is what it is.

Mr. WAGNER.— What did you say about the election of the Governor of a state as an administrative officer, and being the sole administrative of the state? Did I understand you to make a remark of that kind?

Doctor GOODNOW.— No; nothing except the expression of a wish. I did not characterize the present system in that way.

Mr. CULLINAN.— Well, I thought that you expressed yourself as favoring what is known as the short ballot system in connection with the reforms that you believe are urgent here?

Doctor GOODNOW.— I would. That is, I do not see why the State of New York should not just do about what the Federal government does. All we elect there is a President, and we concentrate our attention on the President and hold the President responsible.

Mr. CULLINAN.— Do you think we hold the President responsible, or the party he represents?

Doctor GOODNOW.— Well, it is the same thing, isn't it?

Mr. CULLINAN.— Oh, no; we trust the people to elect the Governor then.

Doctor GOODNOW.— Yes.

Mr. CULLINAN.— Why cannot they be trusted to elect the other officers of the State?

Doctor GOODNOW.— Well, it is a question that seems to me not so much trusting the people, but it is a question of how it works in practice. Is any State government in this country as efficient as the United States government?

Mr. CULLINAN.— Well, I am not prepared to answer that.

Doctor GOODNOW.— Isn't it true that at the present time the people of the United States feel much more respect for the United

States government for what it does than they do for what other single State governments do in this country?

Mr. HALE.— Except Vermont.

Doctor GOODNOW.— Vermont has 400,000 inhabitants.

Mr. CULLINAN.— Doctor, the United States government is composed of a series of states, the composition of the government is of such a character that it is impossible for them to vote for the members of the Cabinet, you might say, who correspond to our elective State officers.

Doctor GOODNOW.— But supposing it is, isn't it true that at the present time every American citizen knows that when the United States government does a thing it is going to do it better than the State government?

Mr. WAGNER.— I don't think so.

Mr. CULLINAN.— In some respects I admit that.

Doctor GOODNOW.— I don't know of any case at the present time where the people do not feel more satisfaction, more confidence that the thing will be done well, if it is done by the United States government than if it is done by the State.

Mr. PELLETREAU.— And for less money.

Doctor GOODNOW.— And for less money, and it is simply because you have so scattered the State government, the State government is so unconcentrated at the present time that hardly anyone can vote intelligently with regard to State officers.

Mr. WAGNER.— Do you mean at this particular moment comparing the Federal government with the State of New York?

Mr. CULLINAN.— Do you think it is a good thing in a representative form of government for the people to be deprived of the opportunity of considering the capacity of their officers during an election?

Doctor GOODNOW.— I do. I do not think that the people are competent to express a judgment on so many people at the present time. I know perfectly well, I flatter myself that I am a reason-

able man, a reasonably intelligent voter, but I know when I go to vote that I don't know 10 per cent. of the people, don't know anything about who they are, what they have done, who are on the ballot that I am to vote for.

Mr. CULLINAN.—Do you think you are doing your duty as a citizen when you do not inform yourself?

Doctor GOODNOW.—I cannot inform myself. I don't know how to and there are not 10 per cent. of the citizens who do, and what we do, of course, is to rely, so far as we can, upon the party organization. We say, on the whole we think the Democratic organization is better than the Republican, or the Democratic party is worse than the Republican, and we let it go at that, and in a great many instances, we take what happens, where there is unfortunately an attempt made by a voter to discriminate apart from the party, and to vote for persons, then you get a lot of discordant people into the government, the Governor may be a Republican, the Comptroller a Democrat and so, and then what do you do? You simply have paralysis of the State government. Nothing is done during that period. I do not think that that is common sense, and we certainly do not have it when we come down to the Federal government. There we know that the administration is either Democratic or Republican and we hold them responsible for it, and we cannot do that in the State government.

Take, for example, here is a State government, we have an Attorney-General who is elective. One of the things that have happened a number of times in the history of the State is that we have had a Governor of one party and an Attorney-General of the other, and the Governor would not trust the Attorney-General to counsel him, and the Legislature has been compelled to provide a personal counsel who can be appointed and who will be in sympathy with his political view.

Mr. BOCKES.—Suppose the Attorney-General is appointed by the Governor, he to advise all the officers of the State, suppose he has to write an opinion which will not satisfy either the officers of the State, the same as the corporation counsel of New York, he is supposed to be the adviser of the comptroller, but he is ap-

pointed by the mayor, and what happens to him if the opinions which he should write should offend the mayor and be in favor of the comptroller? Does not the same thing apply to the Attorney-General?

Doctor GOODNOW.—That is an argument for not electing the comptroller and mayor at the same time.

Mr. BOCKES.—Isn't it an argument to elect your corporation counsel or have him appointed by all those parties —

Doctor GOODNOW.—Then it seems to me you would have it worse still.

Mr. BOCKES.—Isn't he supposed to advise the Legislature, and advise even the county officers in case he is asked for an opinion? In that instance, if his advice should not satisfy the Governor, and he was the Governor's appointee, why, how long would he remain Attorney-General, do you suppose?

Doctor GOODNOW.—Well, the Governor is the more important person, isn't he?

Mr. BOCKES.—But he ought to be in such position that he could advise fearlessly and honestly everybody in the State.

Doctor GOODNOW.—We do not think that is necessary in the Federal government. The Attorney-General there is appointed by the President; he is removable at will, and there is never any difficulty which has developed, and Congress has not had to provide the President with a personal counsel, as has had to be done here in the case of the Governor.

Mr. STIMSON.—How about the Solicitor of the Treasury? I think he exercises a power very unlimited in the Federal government.

Doctor GOODNOW.—You mean the Comptroller of the Treasury?

Mr. STIMSON.—Yes. He can stop the payment of money by any cabinet officer, by the President himself, can't he?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—Has he ever been removed?

Doctor GOODNOW.— Not that I know of. I think the last man, Treadwell, has been in there about fifteen years.

Mr. STIMSON.— I think I noticed by the paper yesterday that he had stopped the payment of some military expenses, without being removed.

Mr. HALE.— Is that legal or moral power that he has gathered to himself by being worthy?

Doctor GOODNOW.— The Attorney-General.

Mr. HALE.— In other words, when he does a thing as radical as that he is holding there a superior office, isn't he?

Doctor GOODNOW.— They have gradually got the idea down there that the Comptroller of the Treasury ought to be about as independent as a judge.

Mr. HALE.— Without any restraint? Like a Member of Parliament?

Doctor GOODNOW.— They play the game that way.

Mr. NICOLL.— Have you considered the relative expense of the United States government, the administration of the government of the United States as compared with the State government?

Doctor GOODNOW.— I never went into that.

Mr. NICOLL.— What is your impression?

Doctor GOODNOW.— My impression is they do work much more cheaply in the United States government than they do in the States.

Mr. HALE.— States generally, or in the State of New York?

Doctor GOODNOW.— I don't know about the States personally, but I think in the State of New York.

Mr. AUSTIN.— I do not think you are correct when you intimate that the reason for creating the office of counsel for Governor was friction between the Attorney-General and Governor. The duties of the counsel to the Governor are entirely distinct and separate and different from the offices that have been, from

time immemorial, filled by the Attorney-General, and his opinions have been confined to advice to the Governor on matters of legislation, where the Governor needed an adviser through his inability to go into detail.

Doctor GOODNOW.— I think if you will go to Washington you will find that the Attorney-General does that work. There has been no necessity under the United States Federal organizations for it.

Mr. HALE.— He is the personal appointee of the Governor.

Doctor GOODNOW.— But you have had to have the officer here because the Attorney-General was not the personal appointee of the Governor.

Mr. AUSTIN.— No; I don't think so.

Mr. WAGNER.— A deputy could easily enough be assigned, but I have forgotten which Governor began the practice, but it was desired to have the place in the executive department.

Doctor GOODNOW.— That often is a reason.

Mr. BEACH.— Doctor Goodnow, to go back to the budget under discussion, what would be the practice in case the budget is actually passed and was not sufficient for some particular department, in actual practice for the current uses and expenses? Would it be the idea that each department must be actually held down for that current year to the expenditure of that amount of money, apportioned to it in the appropriation bill? Or would we be confronted with a supply bill every year, as we are now, to make up the deficiencies?

Doctor GOODNOW.— That, of course, would all depend upon the way in which the system is administered, and would depend upon the conditions of any particular year. You can foresee to a certain extent, but you cannot foresee absolutely. This building burned one year. You might have to have a supplementary estimate come in for that, and deficiency bills. You might have them, but I don't think you would have as many as you have at the present time.



Mr. WAGNER.—It would tend to have the different departments apportion more nearly what they actually now get. In other words, it seems to be the practice of the Legislature to arbitrarily cut down the appropriations way below, apparently, what is necessary and then immediately make it good with a deficiency bill.

Mr. STIMSON.—I think what Mr. Beach is referring to there has happened, according to my recollection of the evidence, rather more commonly from an attempt to make an apparent or false economy on the part of the estimates. I mean that, there being no budget responsibility, it has appeared that it has become a practice very often to make the regular appropriation bills smaller than they needed and then cover it with a supply bill. That has been stated, with how much accuracy I don't know.

Mr. DEYO.—Doctor, that, as Mr. Stimson has intimated, the fight under the English system of government for 100 years was as to the question of who should pull the purse strings. That fight was transferred to the colonies here, and when this government was established it was a departure, to some extent, from the English system, in that we vested in our Legislatures the absolute control of the purse strings. In that respect it differed from the English system—the principle was different. We have always adhered to that, I think, in all of the States and also in the Federal government. What would you say to this proposition, that this suggestion of permitting a budget-making body to consist of the Governor and some of the officials, whether elected or appointed, it is immaterial which, but to allow the executive or the administrative branch of the government to make up a budget for the legislative branch, and then prohibit the legislative branch of the government from increasing those appropriations? In other words, aren't you departing from a fundamental principle in our theory of government in loosening up the hold of the Legislature upon the purse strings and transferring that to the executive or administrative branch?

Doctor GOODNOW.—Well, it does not seem to me that there is anything inconsistent with democratic government. That is, if you consider the control of the purse strings consists mainly in the facility of pulling them open, why then, of course, that would

be inconsistent with the idea of the control of the purse strings; but I doubt very much whether there is any fundamental principle in democratic government, as we see it in this country, which must necessarily involve extravagance. That is what seems to me that your argument leads to. That is, we must let the Legislature have this control in order that they may open the purse strings, not that they may close them. The theory of the old days was to close the purse. That is what the people wanted to do, and here this simply encourages extravagance. It does not seem to me that that is a necessary fundamental characteristic of popular government.

Mr. DEYO.—Under our present system, the Legislature has the right to open our purse strings, and the executive branch has the right to close them.

Doctor GOODNOW.—Yes.

Mr. DEYO.—Doesn't this suggestion involve a transposition of those functions?

Doctor GOODNOW.—Certainly, a transposition of the functions.

Mr. DEYO.—It gives the executive branch the right to open and the legislative the power to close?

Doctor GOODNOW.—It is a transposition of the functions as they are distributed at the present, but historically, of course, as Mr. Stimson has pointed out, that was not the original idea.

Mr. STIMSON.—Wasn't the first change from the old order made when we gradually allowed the first closing of the purse to be transferred to the Governor?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—And wasn't that a complete reversion?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—Of the theory of the fathers?

Doctor GOODNOW.—Yes.

Mr. STIMSON.—In that it conveyed to our Governor the real power over the purse strings?

Doctor GOODNOW.—And that is only common of the grant to the government, the veto power on an item in the appropriation bill.

Mr. STIMSON.—Precisely, it has come as an outcome of the extravagance of which you speak?

Mr. TANNER.—Substantially, isn't the budget system which you now advocate merely a veto in advance? The Governor fixes a figure beyond which the appropriation cannot go?

Doctor GOODNOW.—Yes.

Mr. TANNER.—Does it at the beginning of the term instead of the end of the term?

Doctor GOODNOW.—Yes.

Mr. CULLINAN.—Supposing the Legislature, which has the duty on it of imposing the tax to raise the funds of the State, supposing they say, we won't raise any funds, what is going to be the outcome of that situation? Aren't you putting the cart before the horse when you say you want an independent body to say how much money shall be raised?

Doctor GOODNOW.—As a matter of fact, the action of the Legislature is not necessary in the present time for the raising of most of the funds of the State. That is, most of the taxes of the State at the present time, out of which State expenditures are defrayed, are fixed by permanent law. That is, the Corporation Tax Law, Inheritance Tax Law, and Liquor Tax and a series of other laws, and it is only recently that we have come back to a direct tax which makes it necessary for the Legislature to act in any one particular year. We went on for years here without the necessity of any action on the part of the Legislature for the purpose of bringing the revenues in.

Mr. CULLINAN.—But the Legislature represents the people, and they have passed those laws, and now you are going to say to the Legislature that all those who raised those revenues cannot have anything to say about the appropriations?

Doctor GOODNOW.—Yes; you can cut down appropriations that are proposed, but, in order to prevent this log rolling that has been

going on, and which is increasing at an alarming rate, the expenditures of every State in the Union doing the same thing, they are doing it in the Federal government, a practice which is not practiced in any other government, we are going to say, you cannot raise those appropriations.

Mr. CULLINAN.—Do you consider they have log rolling in Washington?

Doctor GOODNOW.—Certainly. Pork barrels and all others.

Mr. STIMSON.—But in Washington they have not this system that you propose of preventing the estimate from being raised?

Doctor GOODNOW.—No. And historically here is what the House of Commons, from which every Legislature has sprung, found as a result of its experience, it had to do, and did it two hundred years ago.

Mr. CULLINAN.—Is not the budget system in England the result of the fact that the men in the House of Lords owned England at that time, and have continued to own it since so far as real estate is concerned?

Doctor GOODNOW.—I do not see how that could affect this.

Mr. CULLINAN.—The money has to be raised by taxes.

Doctor GOODNOW.—But as a general thing where the owners of the land — the land owners — controlled the government, you find they do not let the taxes go on the land, and they have not let the taxes go on the land anything like what you have here. They put them on indirect taxes there until recently.

Mr. HALE.—The large estates are being broken up there?

Doctor GOODNOW.—That is just lately.

Mr. AUSTIN.—Just as a matter of information, and not as a matter of importance here, in England, is a direct tax levied the same as we have it here? Do they have a direct tax?

Doctor GOODNOW.—On the land?

Mr. AUSTIN.—Yes.

Doctor GOODNOW.— Practically, no. They have a tax on the rentable value. If a house is not rented they do not pay taxes.

Mr. STIMSON.— Their main tax is on incomes?

Doctor GOODNOW.— Yes.

Mr. LENNOX.— Doesn't the extravagance in this State come from the administrative department rather than from the legislative department? The extravagance that has grown up, hasn't that come from administrative department, and hasn't the Legislature done its best by cutting down estimates asked for by the administrative department?

Doctor GOODNOW.— I don't know. I have not been up here and I cannot speak from actual experience.

Mr. TANNER.— The same Legislature has kept on increasing the number of departments.

Mr. LENNOX.— You do not want to take the right away from the Legislature to create a department?

Doctor GOODNOW.— All the legislators like to have a little State money spent in their district.

Mr. LENNOX.— The main extravagance is in the different departments of the State made up by the administrators of those departments, and so really the check on extravagance now rests in the Legislature. They exert it to a large extent.

Doctor GOODNOW.— I should say, from your description of the case, that one would have to come to the conclusion that the legislative efforts have been ineffective and what you want is something that will be more effective.

Mr. LENNOX.— Yes.

Doctor GOODNOW.— This has been adopted, as I say, in England and in every English speaking country except our own. They spend a good deal of money, of course, but I think it is more effective.

Mr. LENNOX.— Don't you think a budget made up by administrative officers would be less or smaller or more economical than the budget made up by the Legislature?

Doctor GOODNOW.— I think so.

Mr. LENNOX.— That is not true because the budgets put in now by different administrative officers are large?

Doctor GOODNOW.— But you have no check upon the part of the Governor or no check by any central body.

Mr. STIMSON.— At the present we have no budget body.

Doctor GOODNOW.— No.

Mr. STIMSON.— We have a series of estimates made up by subordinates?

Doctor GOODNOW.— Yes, sir.

Mr. LENNOX.— That has to be made up by subordinates. Mr. Prendergast told me that theirs are made up by subordinates of large experience.

Mr. STIMSON.— But Comptroller Prendergast told us at the same time that that same budget had been cut down \$6,000,000 a year by their central Board of Estimate.

Mr. LENNOX.— And further cut down by the Common Council.

Mr. STIMSON.— And further cut down by the Common Council. As I remember the figures the average cutting down by the central executive heads the lowest was \$6,000,000 and it ran from that up to nearly \$12,000,000, while the Board of Aldermen cut it down about \$700,000 or \$800,000, the figures we had for the last year.

Mr. RHEES.— This does not prevent the Legislature from reducing?

Doctor GOODNOW.— Not a bit. It only prevents them from increasing.

Mr. AUSTIN.— Here was a suggestion made by Congressman Fitzgerald before the Committee; he favored the budget idea.

Doctor GOODNOW.— He was opposed to it at one time.

Mr. AUSTIN.— He said in his judgment you should not go so far as to absolutely take away from the Legislature the right to

increase a budget item, but his idea was that you should make it so difficult to increase, by requiring say a three-quarters vote of the Legislature, or something of that sort that it would only be in cases of extraordinary necessity, where there was a popular demand for it, and in deprecation of the Governor's attitude that that would occur.

Doctor GOODNOW.—Look at the history of the thing.

Mr. AUSTIN.—I am simply asking you what your idea is, because he was a big man.

Doctor GOODNOW.—According to the rules of the House of Representatives in Washington, no order is in order which provides for legislation that would increase expenditures. In the case of an appropriation bill, what do they do? They will suspend the rules by unanimous vote, when the thing gets up before the House of Representatives.

Mr. STIMSON.—In other words, they even now have one of their rules which would do this very thing, but nullify that rule by unanimous consent?

Mr. AUSTIN.—That is different from providing by constitutional provision that it could not be increased except by a three-quarter vote, because they could not suspend the rules of the Constitution?

Doctor GOODNOW.—No.

Mr. STIMSON.—I was asking Senator Wagner the other day what the effect had been of the provision which is in the Constitution now, which forbids any local or private legislation except by two-thirds vote. Is that an effective check now?

Mr. WAGNER.—No, sir. It has not any great effect upon the size of our budget.

Mr. DEYO.—Are measures defeated on that ground?

Mr. WAGNER.—I cannot recall of any.

Mr. STIMSON.—Or is it possible for members to obtain two-thirds vote for their particular measure by courtesy, irrespective of party lines?

Mr. WAGNER.— I would not say courtesy, but merit.

Mr. STIMSON.— I will put my question in another way: Is it commonly possible for members to obtain a two-thirds vote of the House for a local or private bill which they desire regardless of party lines?

Mr. WAGNER.— I do not think they experience any great difficulty, because the Legislature usually relies upon the representative in that locality as to the merits of the particular proposition. There are not very many of those.

Mr. STIMSON.— Yes, I understand, but your experience in the Legislature, so far as it goes, would rather indicate that such a provision for a two-thirds vote does not prevent members from getting bills passed by a two-thirds vote for a local purpose when they want it?

Mr. WAGNER.— Not for a local purpose. When it gets to appropriation bills there is a difference. If it required a two-thirds vote to pass the bridge bills they would — the bridge bills that were passed, and other bills, which, while they are not really local bills, that is, State branches, and for an alleged State purpose, you could not have passed any of them, because they could not secure a two-thirds vote for very many of them. I think all the members of my party were recorded against every one of them. And those are the class of bills that Doctor Goodnow is talking about.

Doctor GOODNOW.— I should think, just from a point of view of political expedience, that what you suggest would be a good first step to take; that is, provided something could be adopted. I think from the point of view of actual practice throughout the world, that the only way to check this extravagance is by adopting some such thing as this House of Commons Rule, 1713, but whether the people of the State would be ready for it is another proposition, and they might be willing to accept such a proposal as you make.

Mr. AUSTIN.— That is the idea I had in mind. Of course there is opposition, as well as there are a great many people who favor it. Whether the adoption of some proposition of that sort, still reserving an ultimate power in the Legislature to direct local



representatives of the people, as to whether they might not remove some opposition to the introduction of a budget system —

Mr. STIMSON.— Then the whole question would be whether it was a step which was at all effective?

Mr. AUSTIN.— Yes.

Mr. WAGNER.— On matters of appropriation I should think it would be, if you made the vote high enough.

Mr. STIMSON.— I mean it would not be a case where a man's desire to please another, a fellow member, in return for his pleasing you afterwards would override party considerations?

Mr. WAGNER.— Well, of course, human nature is human nature, and you cannot say that will eliminate that feature of legislative life, but I think it would make it more difficult than it is now to pass bills of that character.

Mr. STIMSON.— Have you any suggestions, Senator, as to how high it would be necessary to have such restriction in order to be effective?

Mr. WAGNER.— If you want to make it effective at all I should say you should make it three-quarters, because if there are party lines, and there are always party lines, it is rarely that any one party has three-quarters control of the Legislature. I never remember it. So that would be quite an effective check.

Mr. STIMSON.— Have you gentlemen any further questions to ask Doctor Goodnow?

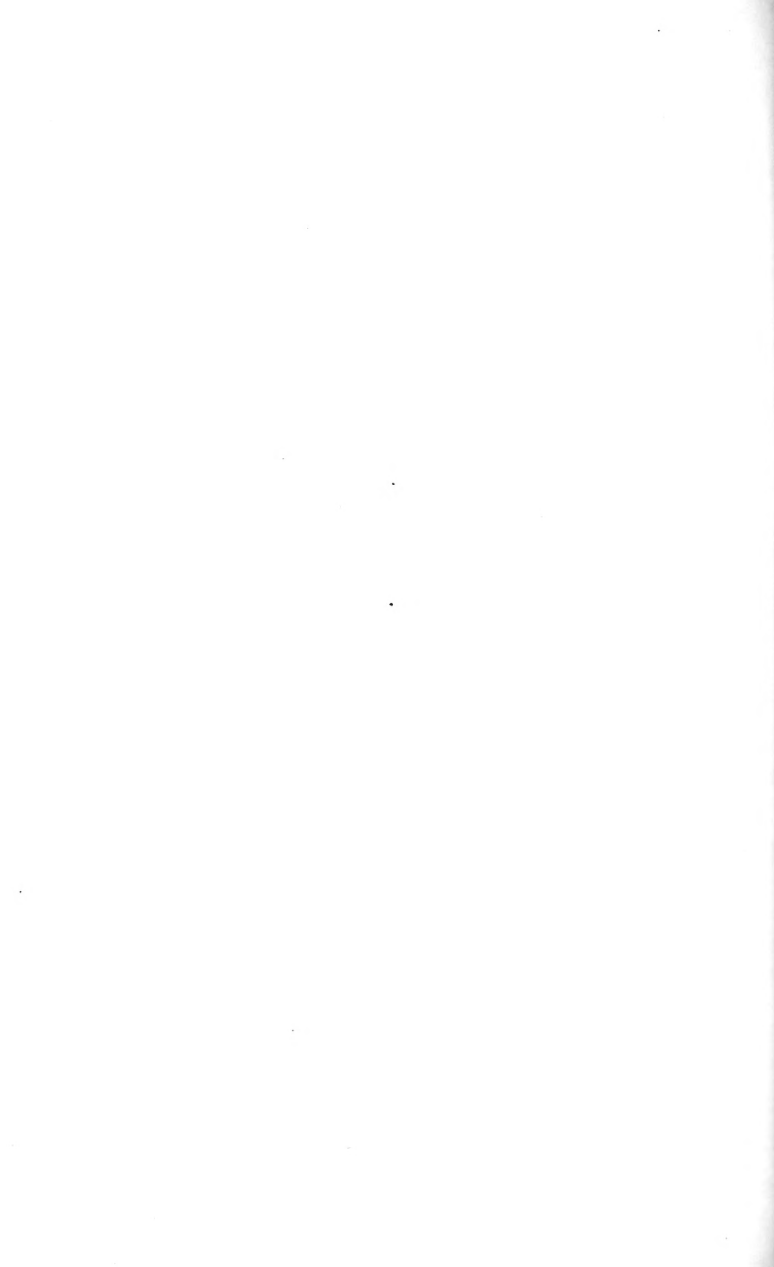
(No response.)

Mr. STIMSON.— Then, Doctor, I want to tell you that I am sure that my Committee and I am also sure that both Committees are very much obliged to you for coming here this long distance and giving us this very instructive talk to-day.

Mr. TANNER.— I move that a vote of thanks on behalf of both Committees be extended to Doctor Goodnow.

Which motion was duly seconded and unanimously carried.

Mr. STIMSON.— We thank you, Dr. Goodnow; it has been a great honor to have had you with us.







# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 14

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JOINT MEETING OF THE COMMITTEE ON GOVERNOR  
AND OTHER STATE OFFICERS, AND COMMITTEE  
ON FINANCE, WITH HON. A. LAWRENCE LOWELL,  
PRESIDENT OF HARVARD UNIVERSITY

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SENATE CHAMBER, CAPITOL BUILDING,  
ALBANY, NEW YORK, *June 10, 1915, 3:00 P. M.*

HON. HENRY L. STIMSON, and HON. FREDERICK C. TANNER,  
presided as Chairmen of their respective Committees.

MR. STIMSON.—Will the Committees kindly come to order? Gentlemen, we have the pleasure of having with us to-day, Doctor Lowell, the President of Harvard University. During the course of the meetings of the Committee on Finance, as the members of that Committee will remember, a question came up as to the methods of budget-making which were in practice in other countries, particularly other English speaking countries, and, in order to get the best possible authority on those methods, it was suggested that we invite one of the greatest living American authorities on that subject.

Doctor Lowell, who is known, of course, to all of you, from his study of the governmental methods in Great Britain particularly,

as well as the other countries of Europe, has kindly consented to come here and speak to us this afternoon about the methods of budget-making in England, incidentally, and also the methods by which the executive functions of that government are carried on, and classified and co-ordinated.

Doctor, the methods of these two Committees have been very informal, and I understand that you would be glad to be interrupted with questions?

Dr. LOWELL.— I should, at any time.

Mr. STIMSON.— And I, therefore, suggest that if you will take the matter into your own hands and proceed in your own way on those subjects, you will probably find a good many of us will be anxious for light and will ask you questions during the course of your remarks.

Dr. LOWELL.— Thank you, sir. I should like to be interrupted and asked questions, because that is the only way to get information. I am here not to give a lecture, but to give such information as anyone may desire, and I want to say in beginning this, I want to have it clearly understood that I have no idea that any foreign methods in any government can ever be transplanted into another country and work the way they do at home; that all you can do is to get suggestions and hints. In fact, I have spent a good deal of my effort in life in trying to find out that it is impossible to transplant any institution into a new soil, and expect the same fruit and yield in its new soil. You can get suggestions, but you cannot bodily transplant anything. You can merely get ideas.

The English budget system, of course, rests upon a principle that we have not in this country, and have no approach to it. That is, the Legislature, who resigns whenever it loses the confidence of the Legislature; that is, whenever an adverse vote is passed by the Legislature on any important point. Of course, one must bear in mind that fact for much pressure which the Legislature exerts on the Executive, and which the Executive exerts on the Legislature is due to the fact that the Executive has no independent origin. It is not like ours, elected by the people independently

of Parliament, but is elected practically by Parliament itself, informally elected. That is, it is the leaders of the party in the House of Commons.

Now, the way in which the budget is originally devised is this: Early in the autumn the various departments make up their estimates of what they will need for the current year, and, of course, like all human things, they make up their estimate somewhat larger than they can expect to get. Any aggressive concern wants to spend more money than it has, because it feels the usefulness of it. Therefore, those first departmental estimates are somewhat larger than can be very well granted. Those estimates are submitted to the head of the department by the different branches of the department beneath it. He goes over them, probably cuts them down a little in most cases, and then they are passed into the Treasury, the head of which is known as the Chancellor of the Exchequer; he goes over them and sees how he can raise money to meet them, and, of course, he cuts down to some extent, and sometimes there is a sharp quarrel between different departments, between the Treasury and some other department, on the question whether he can see his way clear to raise the money, raise money enough to meet the demands of those departments.

One famous case of that was the time when Lord Randolph Churchill, who was Chancellor of the Exchequer, fell out of office, fell out of public life forever, as it turned out. He tried to cut down the estimates for the War Department, and it resulted in a difference, and a sharp difference between him and the War Department, and the War Department had the matter brought up before the whole Cabinet, and the whole Cabinet decided for the requirements for the army that the army wanted, and Lord Randolph Churchill tendered his resignation. The cut was against him, and he went out.

When those estimates have been approved or cut down, or arranged by the Chancellor of the Exchequer, he is then ready to bring them into Parliament, which he does.

Now, I ought to explain what is a little difficult to follow, a little something of the procedure in the House of Commons, because, without that, it is difficult to understand what the different steps of the process mean, and what their real significance is.

You must remember that the appropriations in England that are made lapse at the end of the year for which they are made. Unlike the French appropriations, for instance, which run over indefinitely, or our appropriations—I don't know how it is in New York, but in Massachusetts our appropriations lapse at the end of the year next following the one when it is appropriated.

MR. STIMSON.—Two years, yes.

MR. TANNER.—When does the fiscal year begin, Doctor Lowell?

DR. LOWELL.—The fiscal year begins the first of April, and the appropriations lapse then. Parliament meets usually early in February, and the first thing that has to be done is to make up for any over-run that they are likely to have. That is, the first thing to do is to ask Parliament to cover any excess, which is very sure to occur, before the first of April. For however well your government is conducted, there are certain to be some unforeseen expenses in some way or other, which will necessarily require additional appropriations. The amount in England is very slight. They rarely over-run more than three or four per cent., except in case of war. Of course, in this war and in the South African War, they may over-run to any extent, but ordinarily the calculations are very close, about three or four per cent. The first thing the Chancellor of the Exchequer does is to bring requests for those excesses, whatever they may be. Those are called excess drafts.

MR. TANNER.—Is there any statute preventing an officer from overrunning his appropriation?

DR. LOWELL.—Yes, I will explain that when it comes to the audit.

As a matter of fact, there are very elaborate rules which I can point out to you, and which it is hardly worth while to go into. As a rule, your budget is voted by headings. There are different departments, and under each department the headings are different. The rule is that you cannot transfer from one grant to another, or exceed any grant, except in the Army and Navy where you can transfer from any one grant in the army to any other grant in the army. If you want to take things from the clothing



of soldiers and spend that money on ammunition, you can do it. In no other department can you do those things.

After he has brought in his excess grants to make up for any deficiency in the past year, he then brings in his estimate for the coming year, and, inasmuch as he cannot possibly get this passed before the first of April, he gets some grant on account.

Mr. STIMSON.—About what time of the year are those estimates brought in?

Dr. LOWELL.—Those estimates are brought in usually about the first of March. He has only about a month, and he only gets some provisional grants, enough to carry them along for two or three months, which will be certainly granted anyway, because they are much less than will be granted during the year.

Here is the most important point of all: When he brings this in, there is a rule adopted, as early as 1706, I think it was, and made by sessional order, and finally made the permanent order of the House in, I think, 1713—I could give you the exact dates, but I am within a couple of years, anyway, of the date—providing that no motion shall be made in the House of Commons for any grant out of the public revenue, except upon the recommendation of a minister of the Crown; in other words, a member of the Cabinet, and that always, of course, means the Chancellor of the Exchequer, because he makes all fiscal motions.

No motion can be entertained by the House of Commons, according to its standing order, for any grant from the public treasury, except on the recommendation of a Minister of the Crown.

Now, that has received a very wide extension, and has been copied in all the British colonies. It goes right through the English world.

The reason was this—a reason which we are perfectly familiar with in this country, and that is the tendency of individual members to try to get individual grants for local or personal purposes. A man is much interested in building a post-office in his town, or whatever it may be. It is a thing we are all so familiar with. It was in order to stop that as early as 200 years ago, that they put in this rule. There have been attempts to dodge that. For instance, instead of introducing a motion for a grant to be paid

out of the public treasury, there would be introduced a motion to be paid out of moneys to be hereafter voted by Parliament, and then the House of Commons having voted in favor of that, they have practically expressed their opinion, and the government has to bring in a recommendation, and find the money, because the House had already expressed its opinion. That was dodged by adding a few words to the motion, saying it could be paid out of the public revenues, or sums to be hereafter provided by Parliament, *et cetera*.

You have to continually stop leaks which will occur, of course, in any legal procedure. The object was this: It was to prevent an expression of opinion in favor of an expenditure before the government thought it wise to make it. In other words, the whole art, of course, as we all know, is having the right of initiative.

If you give every individual member of the House a right to initiate things, it may be very hard for the House and the Minister to refuse them, although in their best judgment, they know it is not wise, and, for that purpose, the right of the initiative in expenditures is taken away from the individual member, and placed in the hands of the government. Why? I think for a very good reason, and that is that the House of Commons does not represent, and no legislative body ought to represent, a lot of individual interests. It ought to represent the public at large. And the only body that represents the public at large is the Ministry, which stands for the whole country. In other words, they do not want the individual member to make motions to pay money out of the treasury that belongs to the public at large, for the benefit of the interest of his personal constituent; he ought to be there to represent the public at large. And, although the things he wants to spend money on, may be a thing that is perfectly proper for him as representing his constituents, it is not proper for him to put his hand into the treasury to take it out. And the people who represent the whole public are the Ministers, who represent the whole majority of the House.

I think that has proven in England, undoubtedly, to be a very wise prevention. It has made it possible to know just where you are coming out; it has made it possible for the Treasurer to plan his expenditures, and taxes, so they will meet, and so that they will cover any deficit.

I was looking a while ago at how closely they brought their estimates of expenditures and revenues together. I find that, except for a period of the Boer war, in twenty-five years I think they have never been 4 per cent. apart, and in fifteen years they have been only a per cent. and a half apart. That is very close financial calculation, and, as I say, the results always come out within three or four per cent. of what they calculate for British taxes. All others, for legacy taxes, are even more easily calculated.

Mr. Low.—How is the private member, on his motions, to get the money for his own district? How does he proceed to bring the needs of his district to the attention of the government?

Dr. LOWELL.—He has to go to government offices. But, as a matter of fact, very small appropriations are made for local purposes in England. I do not mean to say post-offices, of course, which are government agencies, but there is very little such as appropriating money for local purposes. It is peculiarly true that local things are paid for by local taxation. There is a singularly small amount of local expenditure by the government except, as I say, the large governmental purposes, and the question of whether you need a post-office, if you please, is determined by the Post-Office Department.

Mr. STIMSON.—This provision that you speak of preventing additional items to the budget, except on the recommendation of the government, has that operated to make possible the keeping of the estimates and expenditures closely together?

Dr. LOWELL.—Yes, sir; because the government calculates just what its estimates are going to be, and what taxation will be required.

Mr. STIMSON.—And that is not subject to increase in the House?

Dr. LOWELL.—No, sir, the House — not only can it make no motion for a new grant — that has been interpreted to mean no one can make any motion for an increase. If the government asks for \$100,000, some one cannot get up and move to make it \$110,000. You can move to reduce or throw out altogether.

You asked me how they bring their local needs to the attention

of the public. It is not unfrequently that a man moves to reduce an appropriation by 100 pounds, to draw attention to the fact that they need 100 pounds more. But you will notice his vote is of no consequence. That has happened on sundry occasions.

I remember there were a number of cases of appropriation for Ireland, one for the education of the poor in Ireland, and one of the Irish members moved to reduce the appropriation for Ireland by 100 pounds, as basis for criticism of the Irish educational policy in not bringing in the Celtic language in the public schools more fully than was done and, as a matter of fact, that, in a very thin House, was carried. Well, the government said this is an accident, it is a small House, and we do not feel obliged to resign on that, and Balfour laughed and said "Ireland gets 100 pounds less for education," and that is all that has been done. And another one said, "Well, the defeat of the government on that is worth 100 pounds to Ireland." That I bring out because it illustrates the point I want to make, which is this method of reducing expenditure, or, indeed, even without making a motion to reduce expenditure, the debate on those items gives an enormously full opportunity for criticism of whatever the government is doing.

Disraeli said once that Parliament is the great inquest of the nation. It is not merely a legislative body. Parliament to-day legislates very little. If you take the thickness of the statute book, as a rule it is comparatively small, and the legislation that it does pass is almost all drawn up by the Cabinet, and with practically no amendment that the Cabinet does not agree to. The private members can bring in bills, but practically they cannot pass them if there is any considerable amount of opposition on anybody's part to them. Parliament is not a great legislative machine; it is really the Cabinet that legislates, with the advice and consent of Parliament. But Parliament is the greatest inquest in the world. That is, it is the body which keeps the closest observation on the working of the Executive government, upon the administration of affairs, of any body in the world.

Mr. STIMSON.—It is a perpetual committee of investigation?

Dr. LOWELL.—It is a perpetual committee of investigation; and I take it that is what the representatives of the public ought to do far more than what they do it in this country. It is the

eyes of the English community. You know very well you can pick up any English paper where you get debates in Parliament, and you will see the amount of investigation that is going on all the time. If anything happens in Scotland or Ireland or way out in the Indies, you will see they may question about it, and when the budget comes up for consideration, there is a great field day.

MR. STIMSON.— I think the Committee may not know how that method of investigation is carried on.

DR. LOWELL.— There are various ways, but the one I want to call to your attention now is the way in which it is done in the discussion of the estimates. Estimates are brought in; they are a thick volume. The first thing that comes up is the civil list, and the support of royal palaces, et cetera. It used to be they had to take those up in order as they stood in the estimates. Appropriations for royal palaces. Somebody would make some absurd remark about that, and it really wasted time, and then by the time they got down to the great and important items of the Army and Navy, there was no time left to debate. It was about time for Parliament to adjourn. Therefore, Balfour introduced this system: He said, "I will take up in order first, any part of the estimates that any considerable number of people would like to have taken up." Well, the Irish member said, "We would like to have the Irish matters taken up first," and the Scotchman said they would like to have the Scotch matters taken up; the people interested in the Army said, "We will take up the Army." He said, "Which items would you like to discuss?" They said item No. so-and-so. Very well, this item No. so-and-so, then under that item you can discuss anything with which it is connected. And there are certain general items under which you can discuss anything. For example, the salary of the Secretary of State for War, under that you can discuss the whole administration, the whole equipment of the Army, the whole policy the Army is pursuing, the way in which they are carrying on the war in Flanders or in the Dardanelles. It really is not done for financial purposes at all because, as a matter of fact, Parliament very, very rarely wants to reduce the estimates brought in by the government, and cannot increase them. Therefore, the real object is

criticism of the government administration; and I fancy that is not a bad idea; that through this system of bringing in all those estimates in succession, you get a chance to put every piece of the government through a fire of criticism and inquiry which searches out anything that you may choose to bring out.

For instance, the time when, in 1895, Lord Roseberry and his government went out. He went out because there was a motion to reduce the salary of the Secretary of State for War by 100 pounds. What for? To draw attention to the lack of cordite in the government arsenals. You can discuss anything you want to bring up.

MR. TANNER.—Before you go further, may I ask this question?

DR. LOWELL.—Yes.

MR. TANNER.—Who is in the ministry that has the final say as to the maximum of those appropriations? Is it the Chancellor of the Exchequer, or is it agreed upon at a whole Cabinet meeting?

DR. LOWELL.—The estimate is brought in by the particular minister, let us say, the Minister of War; he takes it to the Chancellor of the Exchequer. If they agree, that is done. Nobody practically reviews it; it goes through. If they disagree and cannot adjust their differences, the whole Cabinet must decide between them. In other words, the complete executive must decide in the long run. That obviously must be so. If we had it in our system, it would be our government. And, of course, there is always some struggle.

The way in which the procedure goes through in the House of Commons, it is very much like ours, though it is much more elaborately carried out. The first service is submitting the estimates. The estimates are submitted to a Committee of the Whole on supply, and are gone through there. Then the committee reports to the House.

Then when that committee — when that report has been accepted by the House, a bill is brought in to pay that money out of the treasury, but the first procedure is getting through the estimates. You begin with the detail, and very properly so, because your object is the criticism of the action of the government.

When you are through with the detail, you bring in a bill to carry out the items which have been voted.

They have a system which we also have inherited somewhat: The money is paid out of the consolidated fund. All the money that comes in revenue goes into the consolidated fund; all the money which goes out, goes out of the consolidated fund, and the first estimates that are brought in are simply estimates of supply; then the amount of those estimates so approved by the House should be paid out of the consolidated fund. You understand, of course, that there are a certain number of expenditures which are paid every year without a vote. For instance, the King's salary, what they call the civil list, the interest on the national debt, salaries of the auditor generally are all paid out of the consolidated fund, without any estimate being put forward at all.

Mr. RHEES.—Is the auditor a member of the Cabinet?

Dr. LOWELL.—No; I was coming to that.

Let us suppose we have got that bill passed through, for paying that money out of the consolidated fund, and you now have got to get the money into your consolidated fund. To do that, the Chancellor of the Exchequer brings in what is technically known as the budget. He virtually says to Parliament, "Now I am going to show you how I am going to get the money for that," and that is the really most interesting thing to them, because you know the English government is changing its taxing continually; it adds two or three pennies of income tax, and everybody groans, and it takes a little duty off tea, and there is another groan. And lately, you know they have been talking about new sources of supply, and creating a great deal of feeling both pro and con.

That is technically his budget, his account of how he proposes to raise the money to reach the expenditures that have been voted.

When those are also brought in, in the same way in Committee, approved by the House, and then a bill, called the Finance Bill, is founded on those.

The expenditures and estimates for the year are voted about August, when the year has got about a third way through.

Mr. STIMSON.—Has any action been taken on the estimates at the time that the budget, as you speak of it, is brought in?

Dr. LOWELL.—As a matter of fact, the two are running parallel. Part have been passed and part have not.

Mr. STIMSON.—I see; but this final passage in August that you speak of, is the passage of the budget?

Dr. LOWELL.—Nowadays, the whole of the estimates are put in with the expenditures in one big bill, and passed through finally as a bill. They sum up everything that has been done before, and that is called the Finance Bill.

Mr. STIMSON.—In March the estimates come in?

Dr. LOWELL.—In March the estimates come in.

Mr. STIMSON.—Then there is a period of investigation?

Dr. LOWELL.—Then there is a period of investigation, and while that is progressing somewhere about—usually early in April, the budget is brought in, and the discussion of the taxation and of the expenses go on parallel, side by side, until the end of the season, and they are summed up together in the Finance Bill.

Mr. NICOLL.—What happens to the budget when the government falls?

Dr. LOWELL.—The new government comes in and brings in a slightly changed estimate, and you have to do the same process over again. That happened in this case when Lord Roseberry went out. A new government comes in, and then they will say, "We have not got time to make a new budget, and we will change it a little and pass it." If the new government fails, there is a new election, and before the new election there is a special vote to authorize such expenditures till Parliament meets again. That is a temporary measure.

Now, I want to speak about how these things are ordered. You have got to know your appropriations, your expenditures are all voted. I have explained how when the expenditures exceed the estimates, or are going to exceed the estimates, the government, towards the end of the year, makes excess grants to cover them, so that they shall not be spending money without approval.

There are three forms of account that come in. The govern-



ment makes two, or rather the auditor makes one and the committee makes another. The government, very quickly after the ending of the year, brings in a short account of the total of expenditures and receipts, so you can see how the finances balance for the year.

That does not attempt to give the amount expended under each item, but only under the general large grant. That can be made up quite rapidly, and is handed in very shortly after, a couple of months after the close of the year, a general account simply giving a sort of balance.

Mr. STIMSON.— That is after the close of the fiscal year?

Dr. LOWELL.— After the close of the fiscal year, which closes the first of April. Within a couple of months the balance sheet is brought in by the government. Then the matter is sent to the auditor — it takes the auditor longer. The auditor is not a member of the government. His salary is not appropriated by Parliament. His salary is paid like that of the judges, out of the consolidated fund, without action of Parliament, so that he is completely independent. He is appointed by the House of Commons, and not by the government, and, consequently, he is made just as independent as anybody can be made. He goes through all the expenditures of the year.

Mr. STIMSON.— He exercises no executive or legislative functions whatever?

Dr. LOWELL.— He has nothing whatever to do with the control of expenditures, but makes a report upon it.

Mr. STIMSON.— He is wholly unlike the office of the Comptroller in the State of New York, who is both an auditor and an executive?

Dr. LOWELL.— Well, the Comptroller is a treasurer.

Mr. STIMSON.— In the case of the English auditor, he is purely an auditor?

Dr. LOWELL.— He is purely an auditor. The Comptroller here is a treasurer to a certain extent; he is Secretary of the Treasury.

Mr. STIMSON.—And also a tax collector?

Dr. LOWELL.—Yes, sir; and the auditor is nothing but a man who goes over the accounts. He simply takes all of those accounts and goes through them. He not only reports what money has been spent and gets vouchers for the payment to show that there is no fraud, but he also goes through each item to see that it is within the amount that was appropriated, and that that money was spent as directed by the vote of Parliament. In other words, he not merely examines to see that the money is properly spent and that nobody puts it in their pockets, but he also sees that it has been spent for the purposes for which it was appropriated; and, of course, it very often happens that the money was not spent just exactly as it was appropriated. Sometimes the government, as I say, has power, as it has for instance in the case of the army, to expend for one purpose money voted for another, but in that case the Auditor needs the facts, and gets the explanation of the War Department why it was so spent. In other words, he goes through the accounts, sees that they are properly vouched, and annotates them, showing if there was anything which was in any way irregular, his explanation of it, and a statement on his part that it was justified or not justified, as he thinks.

Then, when he comes in, or when his report comes in, which, as you notice, takes about a year to prepare, that is, nearly a year, that is referred to the Committee on Accounts of the House of Commons, which again is an independent committee which has no connection with the government.

Mr. TANNER.—What is it that determines his tenure of office? He does not go out with the Cabinet?

Dr. LOWELL.—No; he is elected by the House.

Mr. TANNER.—For any definite time?

Dr. LOWELL.—No. As I remember, there is no term at all. I do not remember now whether he is elected during good behavior, or elected from year to year, but those things are regulated practically by custom.

Mr. TANNER.—He is independent of the government?

Dr. LOWELL.—He is independent of the government, and he is like the Speaker of the House, and is totally independent.

Mr. STIMSON.—You mean the English Speaker?

Dr. LOWELL.—I mean the English Speaker.

Mr. RHEES.—May I ask whether the auditor has no function before the end of the year? He does not have to certify accounts for payment?

Dr. LOWELL.—No. If I am right, he has no function whatever to the House, except the making of his report upon the expenses.

Mr. RHEES.—After the year is over?

Dr. LOWELL.—After the year is over?

Mr. RHEES.—Yes.

Dr. LOWELL.—Of course an officer may go to him and say, "If I made this expenditure, would you be able to certify it?" There is a certain amount of that done, but he has no control over it.

Mr. RHEES.—His signature does not have to appear?

Dr. LOWELL.—No, except that he certifies during the year, he has to make a certificate when a vote is passed by the House, he certifies to the Bank of England that the vote has been passed which authorizes the payment. See what I mean?

Mr. RHEES.—Yes.

Dr. LOWELL.—He certifies to the Bank of England that such votes have been passed, but he has no control whatever over the expenditure of money. He simply certifies everything—examines it and certifies.

Mr. STIMSON.—He is a pure critic?

Dr. LOWELL.—Yes. Then the House of Commons go in detail over his report. If there is anything irregular they have a right to call in government officials and ask why the irregularities occur, and they report to the House, and if they report that there is anything irregular which requires to be ratified, they ask the House to do it, and they do it.

Mr. STIMSON.— I ask you this question: Does he perform any function at all to help the House in the examination of the government's estimates when they come in?

Dr. LOWELL.— No, sir; none whatever. Nothing whatever to do with the estimate.

Mr. STIMSON.— His duties are purely related to the accounts?

Dr. LOWELL.— Purely related to the accounts.

Mr. STIMSON.— For the preceding year.

Dr. LOWELL.— He has nothing to do with anything until the House has voted it. When the House has voted it he will certify to the bank that it has been voted, and then he sees that the government spends it as voted.

Mr. STIMSON.— The reason for my question was that it has been discussed before this Committee, and has been suggested by a number of the gentlemen who have been here, that expert assistance is almost essential in order to enable the legislative body to perform its work of criticism on the budget. I was wondering whether this officer that you spoke of in any way took any part in that?

Dr. LOWELL.— None whatever. And I suppose it would rather change his position if he did.

Mr. STIMSON.— Yes.

Dr. LOWELL.— Because it is pretty hard to exercise both.

Mr. STIMSON.— Can you inform us as to whether there is any officer who has to perform that duty of helping the House in its examination of the items and of the estimates? What is their machinery to make that examination effective?

Dr. LOWELL.— There is no machinery for that, for the simple reason that that machinery is the Cabinet. You will remember there is one of the things which is peculiar, and that is the Cabinet member is a member of the House.

Mr. STIMSON.— Yes.

Dr. LOWELL.— And, therefore, the Cabinet officers are the confidential officers of the House. And the criticism is, such criticism as there is, and there is a good deal of pretty expert criticism, it comes from knowledge of members of the Houses. In other words, the Cabinet represents the experts in the government. It is the business of the House to represent the common opinion of the ordinary man.

Mr. STIMSON.— May I carry you back one step further?

Dr. LOWELL.— Certainly.

Mr. STIMSON.— Does the Cabinet itself, when making a preliminary examination of the estimates that come up from the different bureaus, have any experts?

Dr. LOWELL.— No.

Mr. STIMSON.— And, if so, what are they?

Dr. LOWELL.— No, sir; it has none; because, in the department persons, in the bureau first, is the department, and then each department presents its own, and the criticism there made is made by the minister. The whole matter is a question of action and reaction between the public and the experts all the way through; because, for instance, let me take a particular department — say the War Department: The War Department brings in its estimates for guns, et cetera. Those estimates of the soldiers in the War Department, of the officers in charge of its bureau, do not go straight to the Parliament or to the House of Commons. They have to be presented to the Secretary of State for War who, except for this moment when we are in war, is never a soldier — he is a civilian, he is a member of Parliament, he is a man in public life, or, if you like, he is a statesman. It is his business to bring the ideas of the public close in touch with those of the experts in his department, and that is done.

Mr. STIMSON.— And such revision and cutting down of the original estimates of the bureau chief is done by their heads?

Dr. LOWELL.— Is done by their political head?

Mr. STIMSON.— Yes.

Dr. LOWELL.—In the first place, and then by the treasury afterwards. In other words, he says to the men, “Now, General So-and-So, you want to appropriate so much money. I have no doubt you are quite right, and I have no doubt the army would be better off for that, but I cannot induce the public to spend that much.”

Mr. STIMSON.—They cannot stand for it this year?

Dr. LOWELL.—I cannot stand for it this year.

Mr. STIMSON.—The reason I asked you this question is that it has been the subject of very careful discussion before the Committee. The estimates which come from subordinate bureaus are almost invariably based on an exaggerated notion of that bureau chief of the importance of his function.

Dr. LOWELL.—Always.

Mr. STIMSON.—That is true of the English, as everywhere else?

Dr. LOWELL.—Yes, sir.

Mr. STIMSON.—Then somebody, in a well regulated government, has to introduce a corrective on the inflated idea of that gentleman?

Dr. LOWELL.—Yes, sir.

Mr. STIMSON.—In England who does it? His chief?

Dr. LOWELL.—It is his chief. Of course that goes right through. You have two bureaus—even the man inside of the bureau wants more than he can get. The head says, “There is no use of my going to the chief of the department and asking him for that much money, we cannot get it.” Then when those estimates for those bureaus all come up to the chief of that department, he pares down. He says, “The public will not stand for it.” Then when the managers of the different departments bring to the Chancellor of the Exchequer, he in turn says, “No doubt it would improve the efficiency of the government if I could do it, but I cannot do it.”

Mr. STIMSON.—And so the paring down goes on.

Dr. LOWELL.—Yes, sir; until it gets to the Ministers who represent not the experts, but the people. And I maintain that you never will get good government anywhere, and never can, unless you represent both the expert element and the lay element, and represent them both in an effective way. You have got to have the public represented, and you have got to have the expert represented.

Mr. STIMSON.—Successful legislation is a compromise between those two kinds of bodies, those two points of view?

Dr. LOWELL.—Yes, sir. I don't know whether I have made myself clear, or whether anybody would like to ask any questions.

Mr. Low.—Do any agencies exist within the department for the preparation of those budgets originally, before they come to the department head?

Dr. LOWELL.—Oh, yes. Each head of a bureau prepares the estimates for his bureau for the coming year, then those are combined, all the bureaus of each department are combined together into an estimate for the department itself.

Mr. Low.—Is there any committee of Parliament, or any outside agent of any kind that is looking into the details of those estimates during the year, so as to be able to criticize them more intelligently?

Dr. LOWELL.—No. The criticism is done after they are brought into Parliament. The whole initiative of this rests with the departments, and with the Executive, and it is only when they are brought into Parliament that criticism arises. Then there is plenty. A man will often get up, as in this particular case pointed out, where there was criticism that there was a lack of sufficient amount of high explosives in the War Department.

Mr. Low.—I suppose then each head—the estimates are prepared in the first instance by the permanent officers?

Dr. LOWELL.—Permanent officers.

Mr. Low.—And the lay judgment is brought there through the political head, for the time being?

Dr. LOWELL.— Yes; there is no particular fear that an expert head of his bureau will ask for less than he needs.

Mr. STIMSON.— Have you any figures which would give us an idea of the amount of reductions that are normally made in those estimates by the heads?

Dr. LOWELL.— You mean inside the bureau?

Mr. STIMSON.— Inside the bureau.

Dr. LOWELL.— No; I haven't that; and that, of course, is confidential information.

Mr. STIMSON.— Which does not come out?

Dr. LOWELL.— Which does not come out. Not that you cannot get it, but it is not published.

Mr. STIMSON.— The first information the public gets in reference to it is when it comes out in published form as a final document?

Mr. PARSONS.— Does the auditor ever criticize any expenditure that is made, provided it is made within the appropriation?

Dr. LOWELL.— No.

Mr. PARSONS.— He cannot judge extravagance?

Dr. LOWELL.— That is not his business. He is purely the servant of the House of Commons, to see that what the House of Commons voted was carried out. In other words, he has no political functions. It is not his business to have any opinion whether an expenditure is wise, but merely whether it is legal.

Mr. PARSONS.— Suppose the opposition wishes to charge extravagance; when does it make the charge? During the discussion of the estimates, or when?

Dr. LOWELL.— There are a great many occasions for that. One is the time when the estimates are under discussion, and the estimates I say range all over everything. Then there are a great many occasions where the House of Commons can discuss anything they want. Curiously enough, when you move to adjourn for a holiday, when you debate the Queen's speech — there



are innumerable occasions, and — many of the kinds that do not interest you, because you have no exact parallel to them, but they are coming up all the time, when discussion may reach over any thing you please. It does not have to be relevant to the motion before the House. When the Speaker first leaves the chair to go into the Committee on Supply, and so on — there are a large number of technical occasions when anybody may call the ministers down and ask questions, and debate and discuss anything that you please. And there is any amount of opportunity for, as we should say, grilling the minister.

MR. STIMSON.— I was going to ask you on that same line; have you got with you the rules that govern Question Day, as I think it is called in the House of Commons?

DR. LOWELL.— I haven't got the rules with me. I could get them if you want them. I remember them very well.

MR. STIMSON.— I should be very glad if you would get them.

DR. LOWELL.— But it is merely to ask a question and not to debate. You can ask a question and get information on that particular matter that you want information about. You ask, for instance, a question, and given notice of it a day or two beforehand, because, of course, the ministry are not omniscient, and you give notice three or four days beforehand that on such a morning you will put any question, whatever the nature may be; anything — it may not necessarily be the act of the ministers. You may ask whether the cotton in Egypt is not equal to the cotton in America, and he will answer it, and you can get information in that way about the working of anything. Or you can raise a debate on it by constant questions coming every few days. If we did that sort of thing, we would probably set a day aside for just that thing.

MR. STIMSON.— Those questions are normally aimed at the action of the government?

DR. LOWELL.— Mostly.

MR. STIMSON.— There are — their object is to find out what the government is doing, and how it is executing its trust?

Dr. LOWELL.—Perfectly. I remember the first time I ever went into the House of Commons, when Mr. Gladstone asked how it happened that when some English sailors had been wrecked on the Cannibal Islands, the government did not succeed in getting a worship there for five days, and when they got there the sailors had been eaten.

Mr. DEYO.—Is there any such thing as parliamentary investigation of expenditures of estimates by committees?

Dr. LOWELL.—You mean special occasions?

Mr. DEYO.—Yes.

Dr. LOWELL.—Oh, yes; there have been a considerable number of them. There have been two or three lately, within the last ten or fifteen years. Every little while Parliament appoints a committee to investigate. Sometimes there is a parliamentary committee; sometimes they request the government to appoint a royal commission to investigate, for the two really have very much the same effect, because the ministry is always in accord with the majority of the House of Commons. It makes little difference in the practice in England. But those commissions are appointed constantly, and their reports are very interesting reading. I mean they record all the evidence that they take, and they are constantly investigating the government. There was a very interesting report made on the whole question of civil service in England, the whole administration, appointment of men, work of the department, and it was very elaborate. Then there have been recent reports on the whole financial situation, expenditures, and so forth. There are two or three on those subjects every year, but those are special investigations. I am talking now of the current inquest that goes on week in and week out, all the way through every session. The government is on the grill all the time, being asked questions about something, and somebody is raising a debate, and that is the thing which keeps civil service up to the mark. With the ordinary bureaucrat, all he knows, everything he does, is liable to be the subject of investigation in Parliament. But if his subordinate makes a mistake, knowing that any act he does is liable to be brought up in debate in Parliament at any time—

Mr. DEYO.—With the permission of the Chairman, I would like to ask another question at this point, and that is whether or not, in your opinion, that feature of the government could be transplanted?

Dr. LOWELL.—You mean the special commission?

Mr. DEYO.—I mean the grilling.

Dr. LOWELL.—Yes; of course, to do that you must bring your objector on the floor. I do not mean he has to be a member of that House to be there all the time, but you have to give him a chance to come in. We do that to some extent in committee, but not in the whole body. Of course, there it is done in the whole body of the House. I believe we investigate our government a great deal too little; that we ought to more, and that the main function of the representatives of the people is not merely to pass law, but to investigate the way in which their government is carried on. In the first place, I believe we have two very grave defects in our government, as I see it, compared with most governments. One is that we use experts a great deal too little; that is, we run our government by amateurs, have men who hold office a few years and go out; instead of having a trained corps of men who make a life career of running many of our departments as we ought, we run them altogether too largely with amateurs, and in the second place we do not investigate our officers as much as they ought to be investigated. When we do investigate, we investigate with hostile committees or commissions, when they should be friendly investigations. I mean there should be investigations asking about this and that and the other thing and it should not be merely investigations for the purpose of attacking some person in a hostile way. There should not be investigations merely seeking some official's scalp. Such is not the English method, but it merely gives publicity, and it is that sort of publicity which is not hostile to the individual, which we should have, and of which we have too little.

We have grown, in late years, very much in our use of experts. I mention one which I happen to know something about, and that is education. The increased use of trained men, experts who spend their whole life in education, as a superintendent of educa-

tion. In cities, in states, the practice is growing more and more. You have appointed within a year or two, a most admirable man as Superintendent of Education of New York, Dr. Finley. He has devoted his whole life to education. Thirty years ago you might have put in somebody who had been prominent in some political office. You certainly would sixty or seventy years ago. We have improved enormously, in our use of experts in certain directions. We have always known how to use lawyers. We have never thought of putting a casual layman on the bench, or as Attorney-General. We are learning to use educators; we are learning to use engineers; we ought to use trained administrators in every branch of our public life, I believe, in a way in which you do not use them.

That is the reason why the corporations go ahead of us: They use experts, while the public does not. I believe democracy needs the best tools the world has every fashioned, and the best tools the world has ever fashioned are the men with the trained human brain.

MR. RHEES.— May I ask you a question with reference to the function of the auditor? You say he has to certify the grants voted by Parliament?

DR. LOWELL.— Yes, sir.

MR. RHEES.— If I remember correctly, you said that towards the end of the fiscal year the government had to bring in supplemental supply bills.

DR. LOWELL.— Yes.

MR. RHEES.— Is that supplemental supply bill voted before the expenditures under it are made?

DR. LOWELL.— As a rule. There are certain emergency provisions. Of course you have always latitude, and there are certain small funds which the government can use in certain cases, in case of emergency. I have forgotten the amount. They are small amounts. You always have to leave a little leeway for margin of one kind or another, and the government can call on those. There is always that to give a little easement, but that is always made up at the end of the year.

Mr. STIMSON.— Before you leave that subject which Mr. Deyo asked you about — is this a fair statement of the difference between their method of investigation of the government and our method of investigation, that they do it normally in a friendly way in a body whose regular daily duty it is to keep in touch with it?

Dr. LOWELL.— Yes.

Mr. STIMSON.— While, on the other hand, when we want to make an investigation, we appoint a special committee which feels that it is its duty to find out something wrong, is that it?

Dr. LOWELL.— That is perfectly true, and their investigation is more democratic than ours in this sense; that it is not done by an appointed committee, but by every member in the House. Any member in the House can grill any member of the government he wants to, and this is constantly done. The case I happened to refer to of Gladstone and the cannibals, it was a member on his own side of the House, sitting right close to him on the bench, who was criticizing the government. He did not want to upset the government, but he said that he did think that when English sailors were going to be eaten, they might cut out a little of the red tape, and get there quicker.

Mr. LINCOLN.— Is there anything like their budget system in any State of the United States?

Dr. LOWELL.— I don't know of any place where there is the relation between the Executives and the Legislatures which makes it really possible. The Executive might submit but could not carry it through, and I know of no place where there is a provision that they shall not increase the budget; and if they can increase it, they will make it all over again.

Mr. STIMSON.— Are you familiar with the provision that existed in the Constitution of the Confederate States?

Dr. LOWELL.— No, sir.

Mr. STIMSON.— There was such a provision.

Dr. LOWELL.— To what effect?

Mr. STIMSON.—Practically to that effect, except that it was not an absolute provision against the Legislature making increases. It was a provision to the extent that no increase could be made except by a two-thirds vote.

Dr. LOWELL.—I will say that the English provision has been adopted in a way in Australia, in New Zealand and in Canada. Those places are quite as democratic as we are, and they find it to work well. It seems to work very well there. In France, on the other hand, it is not a success. In Italy it is not a success, and they have had trouble with their budgets. Appropriations do not lapse in a year, and the result is you never know for five or six years what the balance of the year was, because the expenditures went on, and then they were continually moving to increase the budget for local purposes, and of course log-rolling and extravagance went on.

Mr. STIMSON.—The absence of that rule forbidding increases in the budget, as I understand from reading your book, is one of the reasons why the French government has been more extravagant?

Dr. LOWELL.—Yes, and it has found it very hard to find out where the expenses have gone. In Italy and in Switzerland it is the same.

Mr. STIMSON.—I was going to ask you about Switzerland.

Dr. LOWELL.—Switzerland, I cannot tell you very well about that. Switzerland is a peculiarly arranged place. You must remember any examples taken from Switzerland are to be taken with some grain of salt as compared to the application to other places, because Switzerland is very, very small. You will remember that the whole of Switzerland put together has only about twice the population of Massachusetts, and divide that into twenty-five cantons, and you will get some rather minute places. Some of the cantons are not as big as a single town here. You must remember also it is a community of very even distribution of property, with very indigent property.

Mr. CULLINAN.—How is it about Germany?

Dr. LOWELL.— You must remember that in Germany there is no really popular government at all. That is, you have the Reichstag, which is elected, but at the same time the Chancellor is not responsible. The budget there, of course, is all prepared by the executive government, by the Chancellor for the Kaiser, and is put through the Reichstag. The only difficulty they have is that once in a while there has been a dissolution, and the government has always won.

Mr. STIMSON.— In answer to Mr. Nicoll's question, which you answered, are you familiar with the charters of several of our classes of cities in this State, which provide a system somewhat such as you have explained? I mean a budget presented by a board of estimate under the control of the mayor; in our second class cities, to the board of aldermen, which the board of aldermen is forbidden to raise?

Dr. LOWELL.— I know nothing has prevented extravagance like that, there is no doubt about that.

There is one thing I would like to point out, because I think it throws light on the working of the English system. Practically the relation of the English Cabinet to the House of Commons is the New England town meeting. Almost exactly, with your cabinet as the selectmen, and those of you who are familiar with the New England town meetings, know how they interrogate selectmen about as they want to. Instead of meeting every day in the week for half a year, they only have two or three town meetings a year. But the system is singularly like it. You have there the selectmen, who are practically the cabinet, practically elected by the town. Everybody in the town has a right to ask them any questions they please. Practically the whole of the expenditures of the town are laid before them at the town meeting; there is no rule that nobody can raise it, you know, but it is rarely that anybody does raise an appropriation against the will of the public's selectmen. It works pretty well.

Mr. STIMSON.— That is the system in Massachusetts in local legislation?

Dr. LOWELL.— All through New England.

Mr. WESTWOOD.—Is provision ever made, and if so how, for the reimbursement of the Member of Parliament upon his successfully defending his right to his seat?

Dr. LOWELL.—I do not recall any case of reimbursing the man. Perhaps I ought not say it never happened, because it is hard to prove the universal negative, but those contests for seats are made before judicial bodies, and the fines are heavy to the men who lose.

Mr. WESTWOOD.—How would you get into the budget an item for that?

Dr. LOWELL.—The government would not put it in, and if the government would not put it in, you cannot put it in. I don't think they would pay those expenses at all. I think they would rather not.

Mr. STIMSON.—They do not even pay salaries to their members?

Dr. LOWELL.—They do not.

Mr. E. N. SMITH.—Is it necessary for this system that the Ministers be selected from the Parliament?

Dr. LOWELL.—We cannot adopt it just as it stands, but there is a great deal in it that we can adopt to our institutions.

Mr. PARSONS.—How has this system worked in the self-governing colonies?

Dr. LOWELL.—The self-governing colonies, I do not think any of them work quite as well as the English system does, but the budget part I think works pretty well.

Mr. PARSONS.—In the self-governing colonies the central government does make large appropriations for local purposes?

Dr. LOWELL.—Undoubtedly it does, and if it were not for this, it would be, of course, much worse.

Mr. WADSWORTH.—What is the Massachusetts system?

Dr. LOWELL.—It is very much like yours. There is no —

Mr. WADSWORTH.—No improvement?



Dr. LOWELL.—There is no great improvement, no. We have a treasury and cuts are brought in by the Committee of the House, et cetera. We tried to get a little bit under the control of a single committee, but the things work in haphazard sort of way, as here.

Mr. STIMSON.—Have your State expenses increased in Massachusetts?

Dr. LOWELL.—Enormously.

Mr. STIMSON.—Just as much as here?

Dr. LOWELL.—Massachusetts has one advantage over New York, which is not an inconsiderable one, and that is, as the Legislature sits in Boston, it gets a great deal better chance to hear public opinion, and to get men coming there constantly, citizens, before the committee. I merely state that as one advantage, and that is that the Legislature sits in Boston and therefore there are a great many more appearances of citizens before the committees at committee hearings than there is in any other Legislature that I know of in the United States, and that is an advantage. Massachusetts happens to be so homogeneous that that does not have the objections that it would in a great many places.

Mr. STIMSON.—One of the other members has asked me to ask you the exact way in which the members of the Cabinet are appointed in England, so as to get clearly in our minds the relation of the two that you have spoken of.

Dr. LOWELL.—The way by which the Cabinet officer is selected is really perfectly informal, and sort of subterranean, and not a little difficult to draft. As a matter of fact, when a Cabinet resigns, and consequently when a new Cabinet begins, the King sends for what he believes to be the leader of the opposition of the party in power, the party I mean that has the majority in the House, or is going to get the majority in the House. That person is practically designated to him by circumstances. I mean to say I remember very well on one occasion when the Queen sent for Lord Hartington instead of sending for Mr. Gladstone, and Lord Hartington told her at once that there was only one man who could be the head of the Liberal Cabinet, and that was Mr. Gladstone, and she then sent for him.

That man is usually designated, sometimes not. When a leader dies, for instance, if Mr. Asquith should die to-day, he might send for Lord Gray, or Lloyd George, he might have some difficulty, but if the men say no, we are not the men you want to serve you, he will go back, but usually the leader is picked out, and then he goes and picks out his colleagues. He has to arrange them as a checkerboard. Some of them have got to be, obviously, in certain places; some are men where you can exercise some latitude, some what you call the second grade leaders, but in the main he has to take all the leading men of his party. He cannot leave any of them out.

MR. STIMSON.—There is one question that does not pertain to the budget, but it pertains to a matter which is pending before the Convention, and has been discussed, and was mentioned I think in one of the platforms of one of the great parties last year; that was an improved method for the treatment of private and local bills. Could you tell us a little about the methods which are employed in the House of Commons in dealing with that subject?

DR. LOWELL.—It is a long chapter. Local and private bills are treated the same way. That is, a bill which affects a corporation or a town are treated exactly alike. The process is to try to get it out of politics as much as may be. I have always felt that we might get some ideas out of that, but, again, you cannot adopt it in the form there. The procedure begins by filing a notice of what the bill is going to be. In other words, filing the bill in the local government office, local government board office, then it has to be advertised.

MR. STIMSON.—Who files that?

DR. LOWELL.—It is filed by the person who wants it.

MR. STIMSON.—Some one outside of Parliament?

DR. LOWELL.—Anybody outside of Parliament who wants to. The petitioner, as we say. If it is, for instance, a railroad who wants to be allowed to build a spur track somewhere, or let us say that a town wants to be allowed to supply gas to its inhabitants for cooking ranges, or something or other—they do supply all kinds of things now. A town wants to build a bridge across a

navigable stream, or anything else of a local character, they file a bill in the local office, and then notice of the bill has to be published, given by publication in the neighborhood affected, and by posting, etc. Then the examiners of the local government board go through it to see that all proper notices have been given, whether by publication, by posting, by giving personal notice to the people directly affected, etc.

Mr. STIMSON.—Are those examiners local officers?

Dr. LOWELL.—They are examiners of the local government board.

Mr. RHEES.—That is one of the cabinet officers?

Dr. LOWELL.—Yes, sir. Like many of those boards, they have an arrangement by which it is a board, but the board consists only of its head. The others are men like the Secretary of State, etc., but the provision is that the chairman on that board shall be necessary and sufficient for a quorum. The examiners examine that and then the bill is brought into Parliament, either to the House of Commons or to the House of Lords—you may begin either way—and they distribute it so as to get the hearings evenly distributed through the two houses. It is brought into the House of Commons and then referred to a private bill committee, and that private bill committee consists of four members of the house who are selected, not because they have an interest in the bill, but because they have not. That is, no one who has any interest in that bill, or in the locality which the bill affects, is allowed to sit on that committee. They sit in a purely judicial way. The chairman of that body is one of the members who has been in the habit of sitting on those bodies. In fact, they have a chairman's panel from which they draw, which consists of a dozen or more who have been in the habit of sitting on those bills, and some one of those is always chairman of those private bill committees of four. Then the private bill committee sits and before them appears the parties by counsel and argue their questions, and present evidence exactly as you would in a court of law, except for the forms of procedure—that is, the examination of witnesses, what testimony is relevant, etc. The lines are a little more strictly drawn than they are in a court of

law. The hearing is exactly as it would be in a court of law. You produce your witnesses. Of course, in many cases, you are producing expert witnesses, such as engineers to prove that this bridge over the river will or will not greatly hurt the system, etc. They have lawyers who appear, and those are known as the parliamentary bar, men who make it their regular business; and that hearing lasts as long as is necessary, and then the committee reports, and their report is practically always accepted by the house. Then it goes into the other house and the same procedure goes through there; and I have known very few cases where the report of the committee was upset in the House of Commons. I remember one case very well where the committee reported that a great private company ought to have the right to sell electric power. That would have affected the town somewhat, the people in which thought it would interfere with their supply of power to their own inhabitants because this big company could probably supply it cheaper, and the boroughs opposed it, and got it voted down in the House of Commons. There was a considerable howl through the country that the towns had no more right to be selfish than the corporations had.

Mr. STIMSON.—But, in general, the difference between that method of treating local bills and ours is what?

Dr. LOWELL.—Those are referred to a committee which sits like a court, whose members are wholly impartial, and hears evidence and tries the case judicially, and in which the House as a whole practically takes no part.

Mr. STIMSON.—And on the other hand, we try to prevent it absolutely.

Dr. LOWELL.—We try to prevent it absolutely.

Mr. STIMSON.—And then make it subject to evasion by passing private and local legislation in the form of general bills?

Dr. LOWELL.—There is no European country which does as we do; that is which practically treats a private or local matter as a public matter in its parliamentary body, permitting it to be debated and pushed about like a football in its public assemblies. In England they do it this way, but on the Continent those things are all done by the administration.

Mr. Low.— I take it the English method is a very costly one?

Dr. LOWELL.— The English system is a very costly one, and I think perfectly unnecessarily costly, but then that cost you will remember in the main is just the same thing for which we spend.

In other words, if a big, private concern wants a building constructed it will very likely spend a great deal of money to do it in one way or the other.

A contest took place between Manchester and Liverpool on the petition of Manchester to build the Manchester ship canal, the legal expenses of which were \$1,000,000.

Mr. Low.— I remember seeing a ferryboat crossing the Thames years ago, and of being told that the reason they did not have a bridge was that it would cost four thousand pounds to get permission from Parliament, and it was cheaper to maintain the ferry.

Dr. LOWELL.— That, of course, is unnecessary.

Mr. STIMSON.— You mean that the system of treating those matters judicially is right, but the cost attached to it is not, and could be transplanted more economically if the people wished to do it?

Dr. LOWELL.— That is it exactly.

Mr. CULLINAN.— As I understand it, the budget is prepared by the cabinet, substantially?

Dr. LOWELL.— Substantially.

Mr. CULLINAN.— The House of Commons merely has the veto power?

Dr. LOWELL.— Yes. It can reduce or strike out items, but it cannot increase them.

Mr. CULLINAN.— They are not increased?

Dr. LOWELL.— No, sir.

Mr. CULLINAN.— The cabinet is appointed by the King?

Dr. LOWELL.— Yes.

Mr. CULLINAN.— So the King originates the budget?

Dr. LOWELL.—Well, that, perhaps, is not really a fair way to put it.

Mr. CULLINAN.—I want to be fair.

Dr. LOWELL.—When somebody said to me that the King was the fountain of justice, I said yes.

Mr. CULLINAN.—In our country the budget originates, for instance, in Congress, in the lower House.

Dr. LOWELL.—Yes.

Mr. CULLINAN.—And in our State in the lower House?

Dr. LOWELL.—Yes.

Mr. CULLINAN.—In Massachusetts the same way?

Dr. LOWELL.—Yes.

Mr. CULLINAN.—Do you want to make any comment on that situation?

Dr. LOWELL.—My feeling is simply this, that the budget is a public matter. It is not a collection of private matters. It is a public matter, therefore, it would be wiser to have it originate by public officials and not by a lot of people who represent private and local interests. That is really the argument I wish to make upon it, that what the public wants is somebody who represents the public. As a friend of mine said once, and I think there is some truth in it, and I think it explains a great deal of the movements in our government, that the characteristic defect of democracy is that there is nobody whose business it is to represent the public, and to some extent that is true. That is, people represent fractions of the public. The reason for having our budget originate in our State with the Governor is that he is the one official who represents the whole public, whereas, the members of the House are, in each instance, representing small sections of the public, therefore, as a body, their combined good sense is very well, but if you give each of them a chance to originate the budget, you are putting that in the hands of a lot of people who represent individual interests and not the public interests. I believe myself that the reason that the power of the Governor and the President,

etc., has increased so much in the last fifty years is because they come nearer representing the public than a representative assembly does. If you can get the representative assembly to work as a whole, or representing all the public, on questions affecting the whole country, that would be admirable, but when you get them looking at points which affect fractions of the public they cease to represent the public and they only represent a lot of scattered interests.

MR. CULLINAN.— Our Legislature and our Congress impose the tax.

DR. LOWELL.— Yes.

MR. CULLINAN.— Ought they not to say something, or have something to say about how that tax should be appropriated in the different phases of governmental activities?

DR. LOWELL.— Perfectly so, and they do. That is, if your government proposes an appropriation which they do not like, they ought to have the right to reject it. In other words, there is no doubt they ought to have the right to refuse to vote any tax which they do not believe to be right or do not favor, but that is a very different thing from giving individual members the right to propose an expenditure which a man may think in the interests of the whole public, when in fact it is not.

MR. CULLINAN.— You would eliminate the log-rolling feature?

DR. LOWELL.— Yes, sir, I would eliminate the log-rolling features. As it is now we have said that each individual member shall have the right to initiate, but the Governor may veto. I think the Governor should initiate and the Legislature should veto, so far as appropriations are concerned.

MR. E. N. SMITH.— What is the life of the ministry?

DR. LOWELL.— Of the ministry?

MR. E. N. SMITH.— Yes.

DR. LOWELL.— It has varied, of course, a good deal, from time to time. Assuming that this ministry is now terminated, be-

cause they have made a coalition, it has lasted since 1906. You do not mean practically the same body running through?

Mr. E. N. SMITH.—No.

Dr. LOWELL.—This ministry came in in 1906; it was in nine years. The one before 1906 came in in 1895 and consequently was in eleven years. Latterly, they have been averaging eight or ten years.

Mr. E. N. SMITH.—I was asking that question as related to the fact that we elect our Governor for two years. How would that plan operate in connection with the financial system, like that in England?

Dr. LOWELL.—I have no question, sir, that the shorter term that we have for all of our officers makes government more difficult. We have a curious habit in Massachusetts; we elect there a governor every year, but we always re-elect them two terms, making it a three-year term, unless we have some special reason for not re-electing him. It is understood he is not there for three years, but he has the right of nomination, and is habitually re-elected. We are shifting a little now.

Mr. SANDERS.—If the English budget were adopted in New York State how would it be changed, in case the executive affairs are in the control of one party and the Legislative affairs are in control of the other party?

Dr. LOWELL.—Of course, that raises a different proposition from that which exists in England, where they must be of the same party. Although it probably would not work as well as if the Governor and Legislature were of the same party, still I do not think it would produce a deadlock; but, if it did, you would have to take some method by which you can get over a deadlock. There are a great many different ways in which you can get over a deadlock.

Mr. STIMSON.—Are you familiar with the way which has been in effect where some of our insular governments are established?

Dr. LOWELL.—Yes. But we would not want to do that, the budget would be continued until the next election. My impres-



sion is that you will find in most cases that a deadlock will not arise. Even in the State of New York I happen to have taken statistics of those some years ago. The proportion of matters that are carried by purely party votes in the Legislature is much less than it is in the House of Commons.

Mr. SANDERS.—You think the friction would not be any greater than it is at the present?

Dr. LOWELL.—I think the friction would not be any greater than it is at present.

Mr. DEYO.—I don't see how there could be any deadlock, but I can see how the grilling would be decidedly adverse grilling.

Dr. LOWELL.—I don't think that would be objectionable.

Mr. STIMSON.—The grilling in the House of Commons is by the opponents of the government.

Dr. LOWELL.—I do not object to that, but if the Governor presented the budget, and the House refused to accept it, and there were not any power to initiate any budget of their own, there might be a deadlock.

Mr. LOW.—Would you propose that that should be avoided, and how?

Dr. LOWELL.—I could invent various ways of getting rid of that. Of course, if worse came to worse we could have a re-election of either the Governor or the House, if the term ran for some time. You could provide a certain minimum of expenditures in some way, but if you shake the people up in a box they would generally agree because neither party would want to keep the State of New York without expenditures.

Mr. FRANCHOT.—If I understand you, the ministers are responsible to the cabinet, and to the people only through the medium of the House of Commons?

Dr. LOWELL.—Yes.

Mr. FRANCHOT.—What would you say would be the effect of having them directly responsible to the people, not through the legislative branch?

Dr. LOWELL.—It would make a good deal of difference, of course, in the operation of things, and it is for that reason that you cannot adopt their scheme as it stands here. You have got to adapt it to that very condition, and our executive is not responsible to the Legislature, but to the people. That would make you modify the scheme, but still I think there are many points in it that could be adapted to that condition.

Mr. HALE.—What control has the House of Lords over the budget?

Dr. LOWELL.—The House of Commons has always contended that the House of Lords had no right to change the budget in any way, no right to increase or diminish it, but must accept it or reject it as a whole. The House of Lords never admitted that, but they never ventured to exercise any such disputed power. It has been usually admitted that they had a right to reject it, but a little while ago they did reject it, and I fancy they will never again.

Mr. HALE.—That was in 1911?

Dr. LOWELL.—They rejected it, and the election was so decidedly a condemnation of the way they did it, that I do not think that it is likely to be attempted again. Practically they have no financial power.

Mr. HALE.—I happened to be in London that time.

Dr. LOWELL.—Yes.

Mr. HALE.—I understood the King agreed, if necessary, to appoint seventy-six additional peers.

Dr. LOWELL.—He did. He was ready to swamp the House of Lords. They have no powers in financial matters practically.

Mr. HALE.—What effect would that have upon the proposition to have a Legislature of a single house?

Dr. LOWELL.—I suppose you could apply this either to the two Houses or to one. I think it would be possible to apply it to either. Of course it is a great deal easier to work in a government the simpler it is; it is simpler to work a government with one House

than with two; but it does not always follow that the simpler form of government, which is the easiest to work, is always the best. Good results usually come from more or less friction. If a thing works too easily it does not always work best. The very fact that you have two Houses, and consequently some attrition between them, it may be good, or it may not. It does not follow that any system of administration which is the easiest is the best. I think you could work with two Houses or one. Of course it would work easier with one. But as it is now either House can put up or down any appropriation. They must both agree. If they could not put it up, it would make the agreement between the two Houses so much easier to reach, particularly as experience in England goes, they are very rarely cut down.

Mr. TANNER.—Doctor, if you were through with the budget feature, the Committee on the Governor and other State Officers, etc., have been taking up the question of the readjustment of the State Executive's functions. We have found that there is a great mass of departments and commissions, about 150 or 160. I don't know how far by analogy we can get anything from the executive system of England, but I am sure the Committee on Governor and other State Officers, etc., would like to hear what the division of executive departments in England is. If you will take that line up and pursue the same method of permitting questions as you go along, I think it will be of great advantage to the Committee.

Dr. LOWELL.—The English system is a system of departments with single ministers at the head of them.

Mr. TANNER.—In the first place the executive is not, as in this country; it is in the Cabinet entirely.

Dr. LOWELL.—It is in the Cabinet entirely. Of course nominally it is in the Crown, and, as you know perfectly well, everything is done in the name of the Crown, but practically everybody, all the ministers practically, have rubber stamps for signing the name of the Crown. The Crown is a little more than a rubber stamp so far as the ordinary executive government is concerned. Everything is in his name, in the name of the Crown, but it is done by the ministers. The general organization, in fact, is very

much alike in most of the departments. The names and forms are so wholly different that if you will come to read them through you would suppose them to be some heterogeneous group. But you know the whole English system of government is a bundle of shams, and nobody in England ever does what he would seem supposed to do by the title. They always do something different. The Crown does not govern. There is a Chancellor of the Exchequer, and he is not a Chancellor of the Exchequer, no such thing as the Exchequer exists. There is a Treasury, and it has nothing to do with the thing as Treasury. The names are simply outgrown. We are working with old forms and old names, with wholly new substance put into them, consequently one must not be misled by that. Nominally those offices are boards, a great many of them. But, as I was just now saying, the Chairman of the Board is necessary and sufficient for a quorum and nobody does ever attend. I remember when one of the last boards was formed, I think it was the Local Government Board, Lord Hartington who was a singularly honest man, was asked a question in the House of Lords why they should have a board, because that was much less convenient than a single head to the ministry, and Lord Hartington said, "I cannot really remember why a decision was made in favor of the form of the board, but it is perfectly well understood that really there will be no board." He is the Chairman of the Board of Works, and I think he is really the minister. You have noticed that now you hear of the First Lord of the Admiralty, but he is the whole admiralty. The fact is there was a man called Lord High Admiral, and they put that into a commission as it was called, and made a board to exercise the functions of the Lord High Admiral, and now the president of that board is the whole thing, and they might just as well call him the Lord High Admiral, but they do not. For some reason they prefer not to, and there are a lot of curious forms in that way, but practically each department has a minister at its head, and that minister is a Member of Parliament.

MR. STIMSON.—The First Lord High Admiral is the navy?

DR. LOWELL.—That is the navy. Then there is the local government board, the Secretaries of State for the Interior.

Mr. STIMSON.—Would you mind explaining what each one is?

Dr. LOWELL.—I will. Of course, the Foreign Affairs you understand perfectly; and the War Department—you understand that—and the Navy. They are just the same in all countries. Then there is the Chancellor of the Exchequer, the Chancellor who is simply the Secretary of State for the Treasury—Secretary of the Treasury, practically. Then there is the Attorney-General; that does not require any explanation. That is the same with us, practically. Then there is the Board of Trade. The Board of Trade is practically the Ministers of Commerce—what we call the Secretary of Commerce. Then there is the local government board, which has the government of local affairs.

Mr. STIMSON.—As our Secretary of Interior?

Dr. LOWELL.—No. They have a Secretary of the Interior. Our Secretary of the Interior is more than local affairs. They call their Secretary of the Interior the Home Secretary, but the local government board is the man who has supervision of all local authorities, towns, counties, etc., whereas the Home Secretary has the care of the poor, and many other things.

Mr. Low.—Has it any relation to cities—any relation to the debt-making power of cities?

Dr. LOWELL.—Entirely so. That is one officer that does. Practically no city can increase its debt without the consent of that board. The board has very close supervision. Sometimes I notice when you talk to members of the board they say supervision is most admirable, but when you talk to the local people, they say it is a little bit paternal.

Mr. LINCOLN.—Have any of our States a counterpart to the local government board?

Dr. LOWELL.—Yes. Usually divided up among different institutions. Then, as I say, there is a Home Department, which has what is left after you have given things to other people. The Home Secretary is one of the departments from which they have carved out a lot of departments, and left a lot of miscellaneous things, such as paupers, lunatics, and personal affairs of the King,

and such. Then there is the Education Department. Then there is a Special Secretary for Ireland, and a Special Secretary for Scotland. Then there is the Board of Works, which has charge of the public works belonging to the government—I mean the government buildings all over the country. Then, of course, there is the post-office. The post-office, curiously enough, is under the Post-office Department, in the main.

Mr. RHEES.—Is each minister a member of the Cabinet?

Dr. LOWELL.—No. The members of the Cabinet are all ministers, and the most important of those ministers are always in the Cabinet. For instance, the Chancellor of the Exchequer, the Premier, who may not have any office at all, and the Secretaries for War or the First Lord of the Admiralty, etc., those are always in the Cabinet. A president of the Board of Works may or may not be. Outside of the Cabinet comes the Ministry, and the Cabinet is the smaller body.

Mr. STIMSON.—What determines what positions shall be in the Cabinet?

Dr. LOWELL.—Two factors; one is the question of the importance of the department. The Foreign Secretary must be there. On the other hand, a big man in a small place would be put in.

Mr. STIMSON.—You indicate that at one time a man holding one office may be in the Cabinet, but at another time a man holding that same office may not be in there?

Dr. LOWELL.—Yes, sir.

Mr. STIMSON.—Who determines that?

Dr. LOWELL.—The Prime Minister. For instance, Winston Churchill has just got out of the Admiralty because it was thought it was not being well managed, and yet he was not wanted to have a back seat, so he is given another seat. Nominally, his department has charge of the little revenues belonging to the Crown in the Duchy of Lancashire. It is really a small office, but it is in charge of a big man. They put him in the Cabinet because they want him in the Cabinet, but another man to hold

that office would not be. He is always in the Ministry. The Ministry means all the men who resign when the Cabinet goes out. There is a very sharp line in England between what are called political and the permanent civil service. All those men who go out of office when there is a change of Ministry are called ministers and, therefore, there are about twenty-six or twenty-seven of them.

Mr. STIMSON.—Twenty-six or twenty-seven of them?

Dr. LOWELL.—Yes. But if you count the officers of the household, they run up to about forty.

Mr. Low.—What is the size of the Cabinet?

Dr. LOWELL.—Nowadays it runs up to nineteen or twenty—larger than before. I should say the ministers run over thirty.

Mr. Low.—But the Cabinet members are all ministers.

Dr. LOWELL.—Yes, sir.

Mr. Low.—But the ministers are not all in the Cabinet?

Dr. LOWELL.—No; because there are a great many of those departments which have political under secretaries and change with the Cabinet, but are not in it. There is a Secretary for War and an Under Secretary for War. There are about forty go out with the ministers. Everybody else is in the permanent civil service. The departments are all practically organized on that same principle. Whatever the name may be, you have practically got at the head of them one man who is a member of the ministry. Whether in the department or not will depend partly on his own importance and partly on the importance of his office; and he goes out, of course, when the Cabinet changes.

Mr. FRANCHOT.—To whom is he responsible?

Dr. LOWELL.—The ministers stand together. It would be a case, if we do not all hang together, we will hang separately. They must stand together.

Lord Melbourne, it is said, when they had been having a discussion about the price of grain, he is said to have put his back against the door, and when the meeting was about to break

up he said, 'Now, raise the price of the bread or lower it; 'it does not make any difference what we say, but we have all got to say the same thing.'

They may have very bitter fights in the Cabinet, but unless it is so bitter that they have to resign and get out, they must get together, because if they do not they must get out.

Mr. PELLETREAU.—Does Parliament have any power of confirmation of the appointment of the minister?

Dr. LOWELL.—They have absolute power, not of the individuals.

Mr. PELLETREAU.—But as a body?

Dr. LOWELL.—As a body. The first thing that is done is this: suppose a liberal cabinet resigns and a conservative comes in — or take what actually happened the last time there was a change of Parliament. Balfour resigned. Campbell-Bannerman was appointed. What did he do? He knew perfectly well that that House was hostile to him. He dissolved it, and, as he had a right to, went to the country and got a new election. The point there is that the opposition puts down practically a motion for want of confidence in the ministers. If that is carried the ministers resign at once, and practically it is an understood thing in England that at any moment the opposition choose to ask it, that may happen.

Mr. WADSWORTH.—From your knowledge of our general State governments, do you think it practical to have an official who would practically correspond to the English Chancellor of the Exchequer, who would make his estimates to the Legislature, etc.?

Dr. LOWELL.—I think you have got to do that. But if you do that I think you would have an officer who would speak in the name of the Governor.

Mr. WADSWORTH.—A man appointed by the Governor?

Dr. LOWELL.—Yes, and responsible to the Governor. Just as the Chancellor of the Exchequer going into the House of Commons would not be able to speak as he does if he had not the Premier and whole cabinet behind him.



Mr. PELLETTREAU.—I would like to ask the same question as to the auditor?

Dr. LOWELL.—I think your auditor must be independent. Your auditor has to be a man who is wholly independent. I remember a case which I could tell you about that I came across in business myself when I was a comparatively young man.

It so happened that the auditor, who had been employed by the treasurer of a cotton mill came in to a member of the committee of the stockholders on auditing the accounts and said to him, "The treasurer has been stealing. I thought I was employed by him to look after his subordinates, but I have learned that I was employed by the stockholders to report to them, and I report that the treasurer has been stealing."

This is not a case where we are seeking for fraud, but seeking for irregularity. But, in any case, your auditor ought to be appointed clearly; he ought to owe his appointment to a party outside.

Mr. STIMSON.—And his duties ought not, therefore, to be mixed up with executive duties?

Dr. LOWELL.—Not in the least. He is to inspect, and he ought to have no other duties, because otherwise he is investigating himself.

Mr. PELLETTREAU.—Should not he be appointed by the Governor?

Dr. LOWELL.—I should feel it would be a pity to mix up your auditor with your executives in any way. You do not want to mix those things together.

Mr. WAGNER.—You have got to put the appointive power somewhere.

Dr. LOWELL.—Certainly, but it ought to be outside of the executive. You may put it in your House, you may elect him, put him anywhere, but not in the hands of your executives. The probability is the best place to put him is in the Legislature; but, whatever you do, you do not want to put him in the executive, and you do not want to give him executive power.

Mr. STIMSON.— And you do not want to put him in a position where he would be criticizing himself.

Dr. LOWELL.— No.

Mr. PARMENTER.— Does the minister represent the locality?

Dr. LOWELL.— He represents Bristol, but he practically has nothing to do with Bristol, as a matter of fact.

Mr. FRANCHOT.— Who looks after the local interests of Bristol?

Dr. LOWELL.— That is the point. The theory of the House of Commons is that the local interests have no business there. That is the theory. There are two theories of representation; one is, that every man that represents a constituency, and that the aggregate of separate interests is the interest of the community. The other theory is that every member of the Legislature represents the people as a whole.

Mr. STIMSON.— They have other methods by which Bristol is taken care of in a local assembly?

Dr. LOWELL.— Certainly, but I feel that a man ought to represent the whole community.

Mr. FRANCHOT.— The system where he is elected from a particular district, the tendency is the other way?

Dr. LOWELL.— To some extent. Do you know any man who would stand up in Congress and say the interests of the United States are so and so and the interests of the State are so and so, but we are going to vote against the United States?

The CHAIRMAN.— They do not say that, but they do it.

Dr. LOWELL.— But nobody will admit it; which seems to show that a man feels he should represent the interests as a whole.

Mr. WAGNER.— Would not the giving of increased power to the municipal corporation relieve the Legislature from a good deal of local matter?

Dr. LOWELL.— Very much.

The CHAIRMAN.—That is one of the questions that is before this Convention.

Dr. LOWELL.—Undoubtedly.

The CHAIRMAN.—To try to get the local authorities of the counties and the towns and states to assume a large number of functions and be compelled to assume them, which are now done by the Legislature.

Dr. LOWELL.—Exactly.

The CHAIRMAN.—That, in your opinion, would be a marked progress?

Dr. LOWELL.—Oh, decidedly so.

Mr. FRANCHOT.—Could we ask Dr. Lowell, although it is not within the business of this Committee, to tell us what Massachusetts does in that regard?

Dr. LOWELL.—We do the same thing as you do. Any amount of local bills. It is the curse of the Legislature. I think we have a pretty good Legislature, but that is the defect.

Mr. FRANCHOT.—You do not have any system of home rule in the cities then?

Dr. LOWELL.—Very little.

Mr. PARSONS.—Have the self-governing colonies adopted the English system in regard to local bills?

Dr. LOWELL.—I don't know. Canada, we know, has a great deal of local work.

Mr. LINCOLN.—In connection with the accruing of new activities about the government and new bureaus, are those invariably subordinate to some existing department?

Dr. LOWELL.—No. The Board of Works was a new department. Every little while they create a new board, but it is always the same thing, it is always really a menace.

The CHAIRMAN.—But I suppose that is only when the government goes into a new activity?

Dr. LOWELL.— Yes, sir; usually the activities of government grow slowly, and they will be put into some other department until they get big, and then they will split them up.

Mr. LINCOLN.— Mr. Tanner explained there are some 150 bureaus, all independent.

Dr. LOWELL.— I know.

Mr. LINCOLN.— I wonder if they had any such curse, if it is a curse?

Dr. LOWELL.— No; they are carefully grouped under single ministers. A new bureau may be added to a department, but always under that head, and every department is represented in the ministry and the House of Commons.

Mr. RHEES.— But not by a new minister?

Dr. LOWELL.— No. But there are some ministers in the House of Commons to whom every bureau chief can go and say, "We represent our department. Don't you want to answer this question? Or don't you want to bring out this fact? Or don't you want to introduce this bill?"

Mr. DEYO.— Is there any minister who represents labor?

Dr. LOWELL.— The labor interests come under the Board of Trade.

Chairman TANNER.— Are there any further questions, gentlemen?

Mr. CULLINAN.— Just one question, Doctor. Do you want to say anything in reference to the fidelity in the discharge of his duties by a public officer depending upon whether he is an appointee or elected by the people?

Dr. LOWELL.— Well, I don't know that I could say anything that would be of any value in regard to fidelity. I can say something in regard to the kind of officer who would naturally be chosen by one method or the other. My own experience is in watching things, and also in studying government, that it is true that the public can estimate certain qualities very well, but not

other qualities as well. That, for instance, of the selection of an expert is a very, very difficult thing to do, and impossible to be done by the public. It is my business to select experts in life to-day, and I know it is the most difficult thing to do. I can select a good man for the Legislature very well, because those are questions of general integrity and of general intelligence, but when you come to select an expert you are required to ask the advice of a great many people, and make a very careful inquiry, and, therefore, it is that the selection of experts is a very difficult thing to do for the public, and difficult for the Governor. It requires very great inquiry, and from people who know, and have the ability of finding out people who do know.

Mr. CULLINAN.— Exclude experts.

Dr. LOWELL.— I mention all men who are performing any function requiring expert knowledge or training. You must not overburden the people with many names. The public will make a very wise choice of a few men, but not of a great many. A curious thing in England is this: I think that is one way where they have a way of simplifying an issue—the public is called upon to make a very small choice—to decide between a very small number of men. For instance, in a Parliamentary election the only thing a man votes for, as a rule, is a single member of Parliament.

Mr. HALE.— How many names may be on the ticket?

Dr. LOWELL.— There may be a number. He has to pick out the man that he wants. He is not voting for a number. There are some boroughs where they elect two men in one borough. There are not very many of those double-headed constituencies. When he votes in his municipal election he there, as a rule, votes for a single member of the city council, and so on. When he votes for his county council, there he votes for a single man.

They get a very short ballot.

Mr. CULLINAN.— Don't you think that the American voter is rather jealous of his right to name those who shall govern?

Dr. Lowell.— The voter is very anxious to do things he cannot do, and he knows perfectly well that he cannot do them.

What I always say to myself is, and I think I am a voter of average intelligence, when I go to the polls and find I have got to stop and ask somebody how to vote, because the list is so long of names I don't know, I feel that probably a great many other people are in the same situation and feel the same as I do, whereas, if the number were less, I know I should vote more intelligently. I think the American public is a little too willing to undertake a great many things they cannot do well. I think we are inclined to try to do such things; I think that is our national temptation. Many successful business men are men whose business has grown big and they simply cannot adopt the method of a big business, but have to adopt the methods of a small business. I think that is the trouble with our people.

We have grown big, and we are quite unconscious of how big we have grown, and we still think we can run things as we did while we were little.

Chairman TANNER.—If that is all, Mr. Chairman, I move that this Committee extend thanks to Dr. Lowell for coming and addressing us.

Mr. CULLINAN.—I second the motion.

Which motion was unanimously carried.

Chairman STIMSON.—President Lowell, I assure you, on behalf of both Committees, that we are very much indebted to you for coming and for the delightful way in which you have presented the matter to these Committees.

Dr. LOWELL.—I thank you, I am sure, and I assure you I rather enjoyed having the afternoon with you.

Whereupon the hearing adjourned.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 15

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MEETING OF THE COMMITTEE ON STATE FINANCES,  
WITH HON. JOHN J. FITZGERALD

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ROOM 332, THE CAPITOL,

ALBANY, N. Y., *May* 26, 1915, 3:30 P. M.

HON. HENRY L. STIMSON, Chairman.

The Committee will please come to order.

THE CHAIRMAN.—We have the pleasure of having with us to-day Mr. Fitzgerald, who has been for two Congresses the Chairman of the Committee on Appropriations of the House of Representatives, and has therefrom had the chief charge of the making up of four national budgets, so far as a budget exists in our national government to-day. He has very kindly consented to come up here and to give us his experience and his suggestions in regard to financial legislation, as he has seen it in Congress.

Mr. Fitzgerald, the methods of this Committee are perfectly informal, and I suggest that you follow your own wishes in regard to the way in which you care to present to us what you have to say. If you prefer to do it that way, I suggest that you make your own statement and then, if you are willing for us to ask

you questions, afterward, I am sure there are probably a number of us who will do so.

Mr. FITZGERALD.—I will be very happy to put myself in the hands of the Committee. There are so many familiar faces here that I feel I will be in the hands of my friends for the time being, at least.

I have not come prepared with any systematic statement about State finances or even of the finances of the Federal government. At the invitation of the Chairman of the Committee I was glad to come, and, if my experience and information could be of any service, gladly give to the committee such information as I had.

My work has been concerned chiefly with certain problems arising in the attempt to curtail the expenses of the Federal government. I have been a member of the House of Representatives sixteen years, during all of that time serving on committees that had jurisdiction of some appropriation bills, and for ten years a member of the Committee on Appropriations, which handles about 50 per cent. of the appropriations of the Federal government. One of the crying evils in the Federal system at present results from the action of the House of Representatives in 1885 in distributing control of appropriation bills among eight different committees of the House. Until that time, from the creation of the Committee on Appropriations in 1865, with the exception of what is known as the Agricultural Appropriation Bill, and for a short time the River and Harbor Appropriation Bill, all of the appropriations in Congress were under the control of a single committee from the beginning of the government, the Committee on Ways and Means. In 1865 the work had become so great that the jurisdiction of that committee was distributed among three committees, the Ways and Means, Appropriations, and Banking and Currency. And in 1885 a number of important appropriation bills were taken from the Committee on Appropriations and given to other committees of the House.

The history of that movement shows unquestionably that it was undertaken largely for the purpose of breaking the power of Mr. Randall of Pennsylvania, who at that time as the Chairman of the Committee on Appropriations, a man of great power and force, twice speaker of the House of Representatives, had led a



revolt in the Democratic party in the preceding Congress, by which the enacting clause of the Mills Tariff Bill was stricken out; and in order to break his power the movement was initiated and culminated in the distribution of these bills. At that time it was predicted by a large number of men of experience and great capacity, that the result inevitably must be greatly increased appropriations. I recall that Mr. Cannon stated to me a few years ago that the increase in appropriations from that time until Mr. Cleveland found it necessary to issue bonds to restore and maintain the gold reserve in the treasury about equalled the \$260,000,000 bonds it was necessary to issue. There is no doubt that in that period and since then the expenditures of the Federal government have increased out of all proportion to the increase in population and wealth of the United States. Still, that is not alone peculiar to the Federal government. The cost of State and municipal governments of recent years has been very greatly increasing out of proportion to the increase in wealth and population of all communities, and it is due to a very great extent to the fact that movements of all sorts were pressed for the purpose of having governmental organizations undertake functions that do not properly come within the legitimate sphere of governments.

Everybody who has a scheme to reform mankind or better mankind finds it so much easier to get money from the public treasury than private sources, and it seems to be such a popular cry to have the government undertake these things, that the Federal government, I know, has gone far afield in undertaking things no one ever contemplated would be undertaken when the Federal government was instituted. I have proposed in the House of Representatives as the first step necessary to control the expenditures of the Federal government, that all of the appropriations be centered in the committee in the House of Representatives; and a similar action would necessarily follow in the Senate. It is during my own service, if I recall correctly, that the Senate distributed control of the appropriation bills. And one reason for the distribution is the natural jealousy of members of legislative bodies of the power that necessarily goes to those who have intimate control of expenditures in the government. Every member of the legislative body thinks that he is just as important and just as influential and

just as competent as every other member. As a matter of fact, a comparatively few men specialize and become expert in various lines. But every one wants to exercise as much power as he can acquire, and one way is found in obtaining control of the appropriations. But that would not be sufficient to eliminate the evils. It would be the first step. We have reached a point in our Federal expenditures now aggregating a thousand — a hundred million dollars a year, when it is necessary to either very greatly increase the tax — the taxes levied by the Federal government or else to curtail present activities or stop extending the activities of the government.

We have reached about the limit of revenue under our present systems, and if the government is to continue to expand and increase its activities, there must necessarily be very greatly increased revenues.

My own opinion — and what I say has no particular bearing on politics — my own opinion is that one of the sources of fiscal trouble in the Federal government has been the protective system of the tariff. That is where a large portion of our revenues has been raised without any relation whatever to its necessities. That the tariff bill has been framed not for the purpose primarily of obtaining revenue, but primarily to protect industries in this country, with the question of revenue, while important, not necessarily the prime element, so that in adjustment of revenues, there might be very large accessions of revenue, regardless of the necessity of the money for the legitimate and economical conduct of the government. That element is absent in those systems of governments where the parliamentary system exists and where exists the so-called budget system. Our system differs so radically from the English system, for instance, that it is difficult to discuss subjects as compared to our system with any system of government similar to the British system. There the government represents the majority of the Commons as expressed in the most recent election. It prepares all the business except private business. It presents it to the House. The ministers or Cabinet are the men in charge of the business in the government, and when they determine their budget, that is the amount of money that is necessary to conduct the affairs of the government, they also determine the character

of legislation that is necessary in order to produce the necessary revenue to meet the expenditures, and wherever their budget statement shows that there will be a surplus of revenues over the proposed expenditures, their budget always indicates the manner in which that surplus will be disposed of, either by applying it to some new activities, or indicating that certain portions of it will go toward the reduction of their debt. Now, our system differs radically because we separate — and one of the distinctive characteristics of our system of government is the complete separation at least in theory of the executive — or I might put it, as the Fathers did, of the Legislative, Executive and Judicial branches of the government. So that we have under our system the executive proposing the moneys that may be necessary to conduct a government and a legislative body determining how much will be allowed for that purpose; and in the framing of our tax legislation, the executive, as a matter of fact, is not predominant; and it has not been under any political parties, so far as my experience or reading goes.

The executive may have great influence on certain details of tax legislation, but the legislative body, the Congress of the United States, determines the great bulk of items and rates and ways in which revenues shall be obtained. So that we have a system by which the legislative originates, as it must, under the Constitution, the legislation for raising revenue and, while the manner in which it shall be expended is proposed by the Executive, the Congress determines for itself as the direct representatives how it shall be expended.

Now, it has been said that the Federal government has no system whatever approaching the budget system. But that statement is not accurate unless a very narrow meaning is given to the word "budget." I summarized in a speech which I made in 1913, the laws controlling the submission of estimates. President Taft in 1913 transmitted a report to Congress made by the so-called Commission on Economy and Efficiency, and in that message he said:

"The Government is not only in the position of having gone along for a century without a budget, but, what is at this time even more to the point, it has not the organic means either for preparing or for considering one. In the executive branch there is no

There are two theories as to whether any member of the Cabinet should have that right. One school advocates the concentration in some one member, and it was suggested the Secretary of the Treasury, because, under the statute creating the Treasury Department, the Secretary of the Treasury is the only member of the Cabinet who makes his report directly to Congress; it has been suggested that he be required to revise the estimates so as to submit them to Congress.

There is another school which insists that the Congress is entitled as a matter of right to have submitted to it the best judgment of the heads of all the departments, as to the amounts of money required to conduct their departments, and the various purposes to which the money is to be applied, and then that the Congress should exercise the right to determine whether the public service requires those sums to be actually appropriated and, if necessary, additional revenues be obtained, or whether it will determine to eliminate certain specific items so as to eliminate the necessity for the additional revenues.

THE CHAIRMAN.—As a matter of practice, whatever the different theories, it is a fact, isn't it, that the estimates go in without any such revision?

MR. FITZGERALD.—Without any. There was an attempt, I think, during the administration of Mr. Taft, by himself, to exercise some control in that way. My recollection is he issued an order that after the annual estimates had been transmitted, no supplemental estimates should be submitted unless he approved them, and I know that some officials in the government some time complained that, as a result of that, they were unable to submit requests for increases of compensation of certain officials, because they did not quite care to take up those questions with the President, as they did not seem to have sufficiently good reasons to induce him to approve them, although they might have found champions in Congress who would have found reasons adequate for his action.

THE CHAIRMAN.—His step was quite revolutionary to the regular practice?

Mr. FITZGERALD.—Yes, and it had a good effect along certain lines. And this statement—I will not read it entirely—shows that Congress—all of these laws originated with Congress for the purpose—so far as possible of compelling department heads to furnish accurate information and to furnish it in a systematic and logical manner. Then this was found to be a practice common to all administrations and parties, so what I say does not apply to one political party more than another, and does not apply to any particular individual, because I find out that men who have been very staunch economists in the House, become very profligate as the heads of executive departments. It seems to depend upon the atmosphere in which they exist as to how they operate. But Congress in 1909 passed what was known as the Smith amendment which, if it had ever been lived up to by any administration, would have had tremendous value. It has not been. Neither Democrats nor Republicans have followed it; and they don't follow it, because they don't like it. I will read the provision:

“Immediately upon receipt of the regular annual estimates of appropriations needed for the various branches of the government, it shall be the duty of the Secretary of the Treasury to estimate as nearly as may be the revenues of the government for the ensuing fiscal year, and if the estimates for the appropriations including the estimated amount necessary to meet all continuing and permanent appropriations shall exceed the estimated revenues, the Secretary of the Treasury shall transmit the estimates to Congress as heretofore required by law, and at once transmit a detailed statement of all of said estimates to the President, to the end that he may, in giving Congress information of the State of the Union, and in recommending to their consideration such measures as he may deem necessary, advise the Congress how in his judgment the estimated appropriations could with the least injury to the public service be reduced so as to bring the appropriations within the estimated revenues or if such reduction be not in his judgment practicable, without undue injury to the public service, he may recommend to the Congress such loans or new taxes as are necessary to cover the deficiency.”

If that law were complied with by any administration, it would more nearly give us a responsible budget system than anything else that can be devised, because it does this: It requires an administration to estimate how much money is required to conduct the public service. It then requires the fiscal officer of the government to estimate how much revenue will be produced under the existing laws. If the revenue will not be sufficient to meet the expenditure that the administration deems desirable and necessary, then the responsibility is put upon the President, who is the head of the administration to say, first, whether some of these things that the members of his cabinet have suggested, should be done during that year, can without injury to the public service be omitted, and if they cannot, how, in his opinion, money should be obtained to meet these expenses, either by the way of loans or taxes.

THE CHAIRMAN.—That statute has in it the germ of a budget system, has it not?

MR. FITZGERALD.—It is, as near as we can come to it, under our theory of the government, unless we want to radically change it and so intermingle the executive and legislative branches of the government as to give members of the administration a place in the houses of Congress. Now, that statute has been avoided, and a most notorious instance of it is the following: I read the statement of a law where, after the estimates are transmitted to Congress, supplemental or additional estimates cannot be transmitted unless to carry out legislation which has been enacted subsequently to the date when the estimates are required to be submitted to Congress or unless deemed imperatively necessary by the happening of some subsequent event, and in that instance the head of the department must transmit in connection with the estimate a full explanation of the reasons which make it imperative.

Well, there was an estimate submitted to Congress for a certain purpose for a million dollars, and in compliance apparently with that statute, the head of the department made this statement: "This estimate was not included in the annual book of estimates because of the desire to keep the estimates as low as possible."

It was a fraud on Congress; it was a gross violation of the law, and a great injustice to the country, because it was simply, to use the vernacular, a thimble-rigging affair. It did not submit to Congress what they believed necessary but kept the estimate low enough to come within the estimated revenues, and then in violation of the other laws transmitted those estimates. That should be prevented.

THE CHAIRMAN.—While you are on that subject, it is not quite fair to lay all the blame of the non-observance of that statute on the executive branch of the government, is it? As I remember it, there was some opposition on the legislative side also. At the time when Mr. Taft, under that statute, was trying to prepare the first budget my recollection is that the House of Representatives passed a resolution directing him to submit the estimates in the old form, and not in the budget form which he was trying to do.

MR. FITZGERALD.—We put that provision in. If we had not done it we would have had chaos in the fiscal affairs of the government. While members of the Cabinet know how to administer departments of the government, they do not know how to conduct fiscal affairs of government. There has not been one — except those present — who have served in the Cabinet who did not ask more than they required to properly carry on the government. That is from the standpoint of the men who were directly represented by the people to protect the treasury.

Now, in the four years I have been Chairman of the Committee on Appropriations — I take charge of the Sundry Civil Appropriation Bill — we reported the bill four separate years.

That bill in those four years has carried \$97,000,000 less than the amount of money asked for by the departments to conduct the public service. The Senate added a large number of items. The Secretary is familiar with what the Senate does. Everything the House leaves out the Senate puts in, and then a few things the individual Senators are peculiarly interested in. When the bill was finally enacted into law, the four bills were \$59,000,000 less than the amounts requested by the departments to conduct the government. I defy any man that ever lived to show that

in a single, solitary iota, the affairs of the government were in any way injured, any public service was hindered or damaged, or was not conducted even better than if they had the \$59,000,000 they didn't get. Not only that. I undertake to say that without any trouble at all, if there were only half a chance, in the sixteen years I have been in Congress, the government could have been as well conducted for from fifty to one hundred million dollars less than it has been conducted for.

THE CHAIRMAN.— A year?

MR. FITZGERALD.— I don't say three hundred, but it would average from fifty to a hundred.

THE CHAIRMAN.— Each year?

MR. FITZGERALD.— Each year.

MR. PARSONS.— That \$59,000,000 you refer to in connection with the Sundry Civil Bill is spread over four years?

MR. FITZGERALD.— Fifteen million dollars a year; average of \$15,000,000 a year in a bill which would average about \$115,000,000 a year; so it would be about 14 per cent., roughly, of the amount that was requested; and even then I know that I had to consent to a large number of items that I knew and everybody else knew were not essential for the proper maintenance of the government.

THE CHAIRMAN.— Well, isn't it a fact —

MR. FITZGERALD.— That is inherent, of course, in our system of government.

THE CHAIRMAN.— That the estimates, as they now go in, are too high, as everybody knows?

MR. FITZGERALD.— Well, there is this. Mr. Chairman, I think we should bear in mind. Of course, the man who is conducting a great department of the government, if he is of any real value as an executive, becomes very greatly impressed with the importance of his work, with its necessity and with the desirability of its proper extension; and he is planning and proposing the extension



or the increase of the activities of his department. Some of the things are important and valuable, but, relatively speaking, they are not. If we had unlimited sources of funds, and if our theory of government was that it was best for the people that the government should engage in every conceivable activity of government, that would be the way in which it would work out best. But, as a matter of fact — the proper theory of our government is that we should engage in as few activities that can be as equally well done by private individuals as possible, and if that were lived up to, to the fullest extent, we would very radically reduce the cost of our government. I don't know that in our State the same problems would confront the administration of the fiscal affairs, as in the Federal government. We have 434 members of the House of Representatives. We have ninety-six Senators. They represent localities. Localities are interested particularly in certain phases of the Federal government. In a great mining community they want the activities of the Bureau of Mines extended as rapidly and as greatly as possible. In the agricultural communities they desire the activities of the Department of Agriculture extended. If the army worm appears on a man's farm nowadays, instead of the old fashioned way of plowing two or three rows up, so as to stop it, he sends an S O S to the Department of Agriculture, and they send several scientists with all kinds of poisonous decoctions to kill the army worm.

Then, on our sea coasts, we are interested in the deepening and improvement of waterways, the enlargement and increasing of the coast defences, so that the community spirit, the locality spirit, is, as it is intended to be, represented in the two bodies.

Well, a member of Congress who is dependent for his official life and thinks more about that than anything else,— upon getting some activity of the government extended into his district,— is not concerned about how much money is to be appropriated to maintain the entire government. He is not concerned about where it is coming from; so long as he gets his particular appropriations to be expended in his particular locality, he is willing to take chances upon satisfying the people of his district that the other evils are so far off or imaginary, that they are not affected; and that is particularly true under our indirect system of taxation.

One thing, in my opinion, that will stop it more than anything else is the continued and further extension of the income tax after it gets working properly and gets reached out to where the limit of incomes taxed will bring the great mass of people within the provisions of the law, there will be a keener interest in whether an appropriation that is made is satisfactory or not. For instance, I know a community of about 800 people where it costs for rent, light, heat and janitor service, less than \$600 a year for the facilities required for the administration of the post-office department, that secured through the activity of their Representative in Congress a public building of bronze and marble, as fine as anything that can be found in the United States, and it is so out of place that it even makes the landscape look shabby. (Laughter.)

Now, it is estimated that the cost — the permanent charge on the government for that building is between 9 and 10 per cent. a year; so that we have a fixed charge of about \$7,500, in place of one of \$600. It would be necessary for a man to have served in Congress to appreciate the rapaciousness with which men from the smaller communities seek the appropriations for the public buildings.

THE CHAIRMAN.— You got the full brunt of that as chairman of the Appropriation Committee, didn't you?

MR. FITZGERALD.— I have a unique record. I opposed the appropriation proposed to extend the post-office facilities of the district in which I live, and they appropriated it in spite of me; largely because I thought if they needed to enlarge the postal facilities in Brooklyn, they should think of Brooklyn as it is to-day, and not as it was thirty years ago, and they might perhaps, on mature consideration find a more appropriate and economical place for the handling of mails, for a post-office. A post-office that is located off from the subway and transit systems is not the economical place in a modern city.

But that condition that I have described results in this: That most of the House of Representatives generally are not interested particularly in whether an appropriation bill carries a large or small sum. They have an academic interest in it. If they are in the majority they like to say, "Well, they have done well on this

bill; they have brought it in in good shape." But if they have some peculiar interest in something they want to provide for, and for which provision is not made, they are willing, as a rule to vote for everything that is proposed, if it will result in enough votes being given for the matter in which they are interested. The result is that a committee after weeks of painstaking work, very onerous labors, trying to balance up the possible revenues and possible expenditures, trying to determine the relative importance of proposed matters that will bring a bill into the House, very frequently finds itself antagonistic to the sentiment of the House, and the sums are largely increased. Then the Senate adds on, and then the departments. If the head of a department comes to the House of Representatives and does not get everything he asks for, he immediately goes to the Senate and complains of what the House did, and some accommodating Senator always helps him to have it put on the bill; and then it is merely a question of reconciling these differences and doing the best that can be done to get these bills down. The result is that instead of being able to tell in the beginning of the session of Congress, with any approximation whatever, about what the Congress should appropriate to support the government in the next year, it takes about two days after it has finished making its appropriations to tell what has been appropriated. And then you can tell whether you are near your revenues or not.

Now, I proposed a remedy for that and I believe it must come eventually in Congress. It grows out of the provision in the Confederate Constitution. The men who prepared that document were men of great capacity and long public service in the public life of the United States. They had a provision in their Constitution that must have come from their experience and their knowledge of the affairs of Parliament that prohibited Congress from appropriating any money unless it had been requested by the head of the department, unless by a two-thirds vote, or unless it was to pay a claim against the government or for its own expenses; that last is a very important matter, because an executive might attempt to entirely curtail or hamper the legislative body by refusing to estimate for its expenses; and I should have added one other thing: That was under certain conditions the expenses of

the judiciary, although the two-thirds provision would give them power to do that.

THE CHAIRMAN.— Won't you read that provision to the Committee?

MR. FITZGERALD.— Yes, I have that here.

THE CHAIRMAN.— The Confederate Constitution.

MR. FITZGERALD.— Article 1 of Section 9 of the Confederate Constitution:

“ Congress is forbidden to appropriate money from the treasury except by a vote of two-thirds of both houses unless it be asked by the head of a department and submitted by the President or be asked for the payment of its own expenses or of claims against the Confederacy declared by a judicial tribunal to be just.”

That is, that the determination of a court—the final determination of a court of a claim against the Confederate government was paid without the intervention of the executive department. And we have in practice what is similar. That is, all judgments of the court are certified to the House of Representatives as audited claims, and they are included automatically in one of the appropriation bills, with the provision that they shall not be paid unless the time of appeal has expired, or unless the Attorney-General certified they do not intend to appeal.

THE CHAIRMAN.— That provision you have read is quite similar to the one existing for 200 years in the House of Commons rule, isn't it?

MR. FITZGERALD.— Yes.

THE CHAIRMAN.— Have you that with you?

MR. FITZGERALD.— The rule of the House of Commons is:

“ This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue \* \* \* unless recommended by the Crown.”

But there is a distinction. The recommendation by the Crown,

of course, is the submission by the government or the Ministry of its proposed grants to the Crown. Now, the government which is responsible for the control and the administration of the government, and which is the representative of the majority of the Commons as expressed by the people at its last election, submits its proposals. If the Commons are not satisfied with the budget, they can reject it, overturn the government, or they can reduce or strike out some item. But the rule was to prevent the followers of the government from taking things into their own hands, and, regardless of the determination of the men selected as the responsible ministry, to force money on him to spend that he determined that they did not need. The remedy in that case is, if the House of Commons believed they submitted a budget which did not provide for expenditures for important matters that should be granted, to reject the budget and the Ministry would be compelled to resign and appeal to the country, or appoint a new Ministry that would include in its budget the things the Commons wished. Of course, we have no such method of reaching things.

THE CHAIRMAN.— But the effect on the budget of the Confederate provision was to prevent estimates, or the budget you may call it, after it had reached the Congress, from being raised by this demand of individuals on the floor.

MR. FITZGERALD.— Well, I think it was designed at that time to prevent what was so commonly referred to as log-rolling.

THE CHAIRMAN.— That is the short name for it.

MR. FITZGERALD.— That is the combination of the individuals to appropriate money for certain designated functions of government that the responsible government did not believe necessary, desirable or expedient at the particular time, and yet there might be great emergencies and there might be occasions when money should be appropriated and the administration should be commanded to do certain things that it was unwilling to do, and that power should be reserved to the legislative body, and with that provision of the two-thirds vote, it was amply safeguarded, because we might have an administration that would decline to do

certain things that there was an overwhelming public sentiment insisting upon. An election might be conducted upon some issue, and after the administration came into power, the executive side of the department might change its mind, and yet the representatives of the people of the two Houses might more truly and accurately, representing the expressed sentiment of the country, be determined that the thing decided should be done, and they should have that power to compel the Executive to act under such circumstances.

Now, of course, under the State government there is one thing that is supposed to safeguard that, but in many respects, in effect, it is a weakness. When I first went to Congress, I thought it was such a desirable thing that I contemplated to bring in an amendment to the Constitution of the United States, and a little experience made me drop it, and that was the right of the Executive to veto items in appropriation bills.

Of course, we have what is not common in the State practice. The items in the appropriation bills that there is a demand the executive be given authority to veto—it is not as a rule grants of money, but it is a substantive provision of law, which could **not be enacted in any other way**. For instance, we abolished the Court of Commerce in the Appropriation Bill. I was somewhat instrumental in doing that. I was in favor of it. I thought it should be abolished. There was a great difference of opinion. The President was very strongly in favor of retaining it, and yet there was a two-thirds vote of the two houses in favor of abolishing that court. Of course, if a bill could do it and come before the Congress, it could have passed over the President's veto. The only way to accomplish it was to incorporate it in the appropriation bill. Whether it is a desirable thing to do or not, apart from that, under the Anglo-Saxon theory of government, the representatives of the people should be in a position to compel an executive by the coercion exercised by the refusal to grant necessary supplies to conduct the government, to acquiesce in legislation that two-thirds of the two houses would say is particularly desirable.

THE CHAIRMAN.—I notice that this Confederate provision applies not only to appropriation bills, but to all legislation, all

legislation carrying appropriations, whether separate or whether in general appropriation bills.

MR. FITZGERALD.—Well, we have an evil under the present system. I think it is common in the State Legislatures apart from your supply and appropriation bill, to pass a number of independent measures, and they provide for certain increased activities, or certain new functions to be exercised by the government and provide the money.

What I would do in those cases — I would prohibit the legislative body from making the appropriation in the bill. Let them authorize the facility, authorize this new function and require an estimate to be made for it.

Now it might be — you take in Congress — it might be that in December it would be thought very desirable at the beginning of the next fiscal year which would be the 1st of July to initiate some new activity of the government, and Congress might pass a law creating a bureau or a division, establishing some new service, and yet by May it might be apparent that, while it would be desirable, the financial condition of the government would be such that it would be better to postpone it. I would put the responsibility to some extent, at least, for the amount asked and to be added, upon the executive department, and I would compel them to submit the estimate, and if they declined to do it — why, with some such power as this, a larger vote than two-thirds vote would pass it. I was recently in Canada, and I was speaking to a member of the Canadian Parliament there, and their supply bills — and it is an interesting thing — are withheld from final action until the very last thing. It is the very last enactment of their Parliament. It excited my curiosity and the theory was, according to his statement, that that was to give everybody an opportunity to petition the Crown for redress or for relief, and the last thing that was done was to finally pass on the supply bill, and in that way they could include in it every grant that was necessary. That eliminated all possibility of the separate enactments appropriating money.

THE CHAIRMAN.—May I interrupt you just a minute in order to be sure we get it clearly, because that is a matter which this

Committee has discussed? I understand your suggestion is that the Legislature should be prohibited not only from increasing the appropriation bills, but from passing separate bills carrying the money appropriations, and that whenever they wished to increase the function of government, they should pass a bill within their abundant power which would make it the duty thereafter of the executive to include the necessary moneys in the budget to carry out that function.

MR. FITZGERALD.—But I would not make it absolutely prohibitive on the Legislature—

THE CHAIRMAN.—I understand.

MR. FITZGERALD.—to appropriate, because I doubt if that would be wise, to go that far, under our present conditions, and neither would I make it compulsory upon the executive to submit an estimate for every service which the law authorized, but there would be an opportunity to fix the responsibility for the failure to request it, and there would be the opportunity for the Legislature to make the appropriation—only I should make it more difficult if the executive failed.

Our great trouble is this: That as long as times are good and money is easy and revenues are plentiful nobody cares particularly what the legislative body does in expending money, but as soon as the expenditures increase so that taxation becomes burdensome, there is a general controversy as to who is at fault, and who should be held responsible for the condition that embarrasses the public by levy of taxes.

We ought to have some way in the system of our government to fix direct responsibility, and you cannot fix responsibility if the power is too greatly scattered. We must concentrate the power and concentrate the responsibility. We must have some one to whom the people can go. If you have it too diffuse, while the agitation may be great you never reach anybody.

THE CHAIRMAN.—And where do you suggest that concentration be put in the way of initiating these estimates?

MR. FITZGERALD.—I would put it in the Executive. I would make him responsible at the outset, and I have had experience with



executives. I have an interesting line of correspondence in my files, extending over a number of years, coming right down to date, and it is similar in all instances, in which the Executive expresses his sympathy with the efforts to keep down public expenditures as low as possible and expresses some complimentary expressions to those engaged in that work, "but this matter has just been called to my attention and it seems so important and desirable, I hope it will be possible to make provision for it."

I know, I know that the most ancient, time-worn, moss covered things that have been rejected time and time again, are placed before the Executive in such an attractive way that these letters come about them. He doesn't know, and he can't know. But if in some way he could be compelled to realize that at a certain time he must make up his mind what the important and desirable things are, and after that period he has to defer suggestions for another year, why, men will be keener to get before him everything that is essential.

The action which President Taft took, which we have discussed, had this result: Every member of that Cabinet before he finally passed on the estimates of his subordinates, he had not perhaps paid much attention to them, some of them, prior to that time, but before he finally passed on that, they did a good deal of inquiring about the various bureaus and services of these departments. He wants to know if this thing were taken care of, and if this were desirable. He had to know just what he thought would be imperative for the public service of his department next year, so as to have them all included, and taken up, because he realized it would be so much more difficult. Now, what happened — I don't know how you can prevent this very thing except by the taking of the initiative away from Congress — was this: In a certain — we will take any department of the government; when the estimates were prepared, the head of the department eliminated some item which was very dear to the chief of a bureau and the estimates went in without that item. It was useless for him to appeal to the head of the department, because he could not satisfactorily explain to the President why it had not gone in. Now, this chief of bureau has been in Washington a good while and he had —

THE CHAIRMAN.—He knew the way to the Capitol.

MR. FITZGERALD.—connections. He was not a stranger in town, and he explained to some friend he thought would have some influence, and they put that thing in there in the appropriation bill.

THE CHAIRMAN.—Put it in Congress?

MR. FITZGERALD.—Well, the head of the department never protested against it. If he could get that in addition to the other things he asked for, he was satisfied. He would not discipline his subordinate for this back-handed way of going behind the administration and increasing the appropriations on it.

Everybody was too busy to keep track of it, and in that way to a considerable extent the beneficial results of that order were undone.

If the House of Representatives and the Senate had been operating under a provision that they could not have included except by a two-thirds vote, an item that had not been requested by the executive, there would have been a very great difference. Mr. Gladstone, in one of his great budget speeches, laid down the principle to which I referred in this speech. He said that the proper function of a legislative chamber — here, I will find it — “Is not to augment but to decrease expenditures.” Of course he was speaking largely, with the view largely in mind of their peculiar system of government.

THE CHAIRMAN.—That is what it means to hold the purse strings, generally, to shut them, and not to open them.

MR. FITZGERALD.—Some persons object that we should not deprive the representatives of the people of this right to loosen up the purse strings, but the universal condition in this country to-day is not that we must safeguard the rights of the people to get money for things. The whole curse of our condition is that everybody is doing their utmost to get it, and succeeds, and the evil that must be corrected — the evil that must be corrected is the evil of excessive expenditure, and that is why in directing our attention to it I am not alarmed at the fact that the administration won't get enough money to do anything. I have never

known any administration — and it is an unfortunate condition when the head of any department of the government is able to say — and it can be said by them right along in the Federal government — that “I didn’t think it was necessary or desirable to spend this money, but Congress insisted on appropriating it for this purpose, and I must acquiesce in the expressed will of Congress.” And I know one department of the Federal government where the common thing is to beg Congress to appropriate more money than the department asks. I undertake to say that it can be conducted for 30 per cent. less, and better conducted than with the money now obtained, because it is the most profligate, extravagant department to be found in the United States. They are engaging in all kinds of schemes, enterprises and activities that have no more connection with government than they have with the government of Mars. I represent a certain county of a district, and I could go to that department in the summer, when campaign time came, and get three or four highly paid experts, a moving picture outfit, and lecturers, and go from one end of my district to another, conducting an illustrated lecture bureau ostensibly for the enlightenment of my constituents, but primarily to retain me in Congress.

That is a desirable thing, I admit. (Laughter.) But it is not really an important thing from the standpoint of the people and the government.

Now, if there were some way by which that could be stopped, and it is difficult to stop it, I don’t think I am immune from any of these vices or evils, I am just as human as anybody else in Congress, and I don’t particularly criticize the man who does resort to these things, but we must in some way eliminate the temptation of the possibility of this kind of action; and when a man is unable to do things of that character, along that line, when he cannot force up appropriations, why, then his only interest is in seeing that they appropriate properly, and it does this: It would do what is done in the governments where they had a responsible government with the budget system. If my constituents are keenly interested in some matter that requires an expenditure of public money, I would be compelled to present that matter to the department that had charge of it. They would

make their investigation. And they would determine whether it was one of those things that should be included, and they would have to take the responsibility for requesting it.

They could not say John Smith forces that on us. And then the total of these submissions would be contrasted, and the administration should be compelled, to save time, to make definite and concrete recommendations as to how the money should be obtained to meet these drafts on the treasury.

Now, I don't know that there is much more I could say in this desultory way. I will answer any questions.

MR. PARSONS.—In your service, how many instances have you known where it was advantageous that Congress increase the amount of an appropriation suggested by the executive?

THE CHAIRMAN.—Where it was advantageous?

MR. PARSONS.—Where it was advantageous.

MR. FITZGERALD.—It would be too broad a statement to say never in my experience, but I think it would be very rare. The head of a department of the government is so naturally interested in his department doing what it should do, and doing it properly and successfully, that they invariably request the money that they need. Now, sometimes the head of a department believes that something should not be done. His experience teaches him that it is a waste of money; there is no beneficial result, and he does not ask for much, and Congress appropriates the money, and he says, "Well, this is what the Congress wishes, and I ought to spend it." I think that happens. But I would say it is a very rare thing, and then only because either for some oversight or because of the change in conditions from the time the estimates were submitted, that it becomes necessary or desirable for Congress to appropriate more. I have had this experience: Estimates would be submitted, and several months afterwards in the course of the investigations the head of the department would state a situation in which it would be his opinion that a larger sum of money would be required than originally asked. The rule of the Committee on Appropriations, which is not the rule in the other committees, is to require the head of department to submit the supplemental

estimate in compliance with the law, and then act under that request. But the situation which I understand you have in mind, that a department determines a certain amount is necessary and Congress, without any suggestion from the department, increases that,—they are very rare, and they result mostly from the underhanded suggestions from people, subordinates, in the department, who want to magnify their work and importance.

Mr. PARSONS.—Or because some Member of Congress wants something done in his particular locality.

Mr. FITZGERALD.—That is very largely the situation.

Mr. PARSONS.—Well, are there many instances where the executive recommends doing away with some customary appropriation, and Congress refuses to do it — whether in your opinion it would be well to do it?

Mr. FITZGERALD.—The most notorious illustration of that was the reorganization of the customs service, where some in Congress recommended reorganization in order to eliminate a large number of useless offices. But the man who represented the district in which there were two or three Presidential offices could speak most eloquently upon the necessity of retaining them. It was only within a few years that we succeeded in doing that. The same was true in connection with the maintenance of certain assay offices, although there might perhaps have been more justification for the position taken by those who urged their retention because the assay office was right at the place where the metal was produced, and they had a better argument than the customs service. In fact, in the customs service we have saved about \$800,000 a year as a result of that reorganization, and it unquestionably is a much more effective and superior organization than under the old system.

THE CHAIRMAN.—How many years was the old system kept up after the heads of departments recommended the change?

Mr. FITZGERALD.—Oh, they recommended changes for a good many years. I don't know how many. I think all the time I have been in Congress; we wanted to get it through four years ago. The first year I was Chairman of the Committee.

Mr. PARSONS.—The same is true of the pension agencies?

Mr. FITZGERALD.—The same is true of the pension agencies. We had an antiquated system by which a pension voucher was made out in the Pension Office in Washington. There were nine or ten or twelve agencies with the agent receiving from \$3,500 to \$4,500 a year, with an office there. Those vouchers were mailed from Washington to the agent's office and from there to the pensioner, and they were executed and returned to the agent's office and then to Washington, and then the checks were sent out.

We, after a number of years, abolished the agencies and provided for the adoption of the voucher checking system, so that now when a pension is due, a man is mailed his pension check, with a voucher attached, and the one act of endorsing the check, having it witnessed by two witnesses, completes the whole transaction. And that is natural.

Public opinion in a locality is very peculiar. That is the effect of public opinion that controls the action of legislatures and the representative of a community who has in that community certain positions which are filled more or less upon his recommendation must be a man of very unusual political virtue to aid in the abolishing of the positions while his party is in power and his friends have the offices. (Laughter.)

Mr. LOW.—Mr. Fitzgerald, I gathered from what you said, and I am interested to know whether I understood you correctly, that you thought that under our American system it would be judicious to give the Executive the suggestion of a budget to be passed upon by the Legislature under conditions which would prevent the Legislature from increasing an item except by a two-thirds vote. Was that the idea you intended to convey?

Mr. FITZGERALD.—I hardly think that it would be wise to—that is, I am speaking of my experience in the Federal government—whether it would be wise at one step to completely deprive Congress of the right to appropriate the ordinary expenditures of the government unless the Executive had estimated. But I would make it so difficult for them to do it, that the times they would do it would be only such occasions when there could

not be any question that they ought to do it. I think to absolutely prohibit would probably be—

Mr. Low.—Fatal.

Mr. FITZGERALD.—too extreme as a start; but to make it a matter of extraordinary difficulty, because in my experience I have not known any embarrassment of any substantial character to come to any department of Federal government because they did not have sufficient funds. Now, when Mr. Root was Secretary of State, that was one department that had more trouble, perhaps, in getting the assistance that was required, than any other department in the government, and there has in recent years been considerable reorganization and extension of the assistance given to it. I have no doubt the organization is much more effective, and yet, while it may have been annoying and difficult and embarrassing at times to the personnel of the department, no substantial interest of the country suffered as a result of it. There is something that the people forget, that it is not the personal inconvenience of the official that is of much moment. I don't worry so much because men in the executive departments complain that they cannot get home to dinner—when Congress is in session. I have to work sixteen to eighteen hours a day, so that if the head of a great department of the government must work eight or nine or ten or eleven hours a day, it is the best indication he is doing his work properly, because he has to take some time to think if he is going to do his business and he cannot spend his time away from his work; I don't mean in his office, but the heads of the departments in our Federal system must do considerable work apart from the time they spend in their office hours, or the departments are not conducted by them; they are conducted by somebody else. Now, it may embarrass, and there are times, I have no doubt, when there is great personal inconvenience and perhaps personal hardship upon some employé of the government because of the failure of Congress to do some one thing or another; but no substantial interest of the government suffers, as far as I have known, because, after all, of course it is something that is lost sight of, as soon as a man is elected to Congress.

Members of Congress are just ordinary human beings, about the average in intelligence and capacity of the people they represent and they do not change when they go to Washington. They are just as anxious to provide the government with the means and the facilities to have it properly conducted, and they do to the best of their ability do that. Of course, there are always differences of opinion, but they do manage to provide the means and facilities. At times a department may be a little hampered, some official may be required to devote more time than could reasonably be expected to his work, but there is always adequate means of handling the work. Of course, this question arises, and that is on a question of broad policy, whether some activity of the government shall enter upon some activity or perform some function that has not been undertaken, and the head of a department may be very keen to have it do it. He may be very enthusiastic about it, and may be disappointed that Congress does not do that, but then that is a matter to be determined by the legislative body, and, while he may be disappointed, the legislative body must assume the responsibility for the failure to extend the activities of the government in the way proposed.

Mr. Low.—That is precisely what the Legislature is for, isn't it?

Mr. FITZGERALD.—That is our theory of government. We may not be very successful at it at times, but that is our theory, and that is where the responsibility should be, and I have never had much sympathy with the proposal that the legislative body should be merely a ratification meeting and that everything that an Executive proposes in the matter of legislation, however it may catch the popular fancy, must be approved by the Legislature or else they are a lot of debauched, corrupt and incompetent men, because I have seen Executives who have been misled at times, and they have lived to repent and to rejoice that the Legislature was obstinate.

Mr. PARSONS.—As far as the Federal government is concerned, would you have the budget made up by the Executive in connection with the river and harbor improvements and public buildings and so on, all those things?



Mr. FITZGERALD.— Well, I would very radically change our method of public buildings. We don't provide public buildings for the public service. (Laughter.)

In the great mass of cases, we provide them to meet certain political exigencies of a locality. You might as well be perfectly frank about that. Congress has authorized public buildings that cannot be completed within six years. Some cannot be completed within four or five years after they are authorized, unless we very greatly augment the capacity of the supervising architect's office to turn out public buildings. Now, we spend about \$20,000,000 a year for public buildings. The supervising architect's office is geared to turn out about \$12,000,000 a year, it claims. Up to about 1900 we had authorized from the beginning of the government about four hundred and some odd public buildings, I think. Since that time we have authorized about 500.

THE CHAIRMAN.— I saw a statement that in 1909 Congress appropriated \$20,000,000 for post offices which the Postmaster-General had not recommended.

Mr. FITZGERALD.— Well, of course, he never recommends post offices at all.

THE CHAIRMAN.— Well, which he stated were unnecessary.

Mr. FITZGERALD.— But I say the Postmaster-General does not recommend. But I don't think there is any question — they have been doing that ever since I have had any knowledge of it. This is what happens on public buildings in the Federal government: Suppose I represent a community or district which has no large city, perhaps the largest town in it may be twenty or fifteen thousand. I may have one or two communities like that. And none of them has a public building; but across the line in some other district, the town of equal size, has a public building that costs \$50,000 or \$75,000. Now, I am a candidate for office and I go in that town and in my speech I announce that I propose to have a public building put there. In most of these places, unless you have a good sized city, a thousand dollars furnishes ample for postal facilities, and then they have an authorization to buy a site. And they pay New York prices out in the sage brush country

for lots, and the government buys post offices. And then, in a community of eight or nine hundred, based upon the theory that there is a tremendous postal business, they will authorize a building of fifty thousand dollars, nothing less than fifty thousand dollars and up. Then, in order to get a better building, a Member of Congress will pass a bill providing that there shall be a term of court held in this town, and maybe the court — the Federal Court will sit there three terms a year, and maybe it will take two days each term to do all the Federal Court business in the town; and then because a Federal Court is to sit at that town, they need a court room and additional facilities and they increase the amount to be expended in the building and some other governmental activity will be provided, and the result is that you can go all over the United States and find buildings costing from seventy-five thousand dollars to one hundred and fifty thousand dollars in communities ranging from one thousand to five thousand people.

Mr. POTTER.— How will you stop that, Mr. Fitzgerald?

Mr. FITZGERALD.— Why, I would have a President who would veto a couple of those bills once in a while and we would stop it.

One of the things that is interesting in political history shows that they do not do it; but this is what happened to a man who had the courage to stop it: One of the charges made against Mr. Cannon when he was Speaker of the House of Representatives was that by the arbitrary exercise of his great power he refused to permit to be considered a bill for which two-thirds of the members of the House had signed a petition. It was what was known as a Public Buildings bill, and they had so framed the bill and had taken care of so many members to their satisfaction that more than two-thirds of the members of the House signed a petition asking to have it considered by unanimous consent, or if he would not do that, to recognize the chairman of the committee to move to suspend the rules and pass the bill; and, as was customary in those days when a request of that character was made of the Speaker, he took the bill and turned it over to some one who was familiar with matters of appropriation. This bill was turned over, I think, to the Chairman of the Committee on Appropriations, and submitted to analysis by some men who were experts in these matters,

and they made a report as to what this bill proposed to do, and when Mr. Cannon found out the character of the buildings and the kinds of places that it was proposed to expend twenty odd million dollars, he notified the chairman of the committee that he would not recognize him to suspend the rules. It was in his discretion under the rules to recognize him, and there was a controversy, and he said, "I will not recognize any one to move to suspend the rules to pass that bill, but if two-thirds of this House has the courage of its convictions, as indicated in that petition, it can remove me as Speaker, and put in a Speaker who will acquiesce in their wishes and pass the bill." (Laughter.) And the bill was not passed.

Now, that is one of the things, strange to say, for which he was so severely condemned, for the arbitrary exercise of power in which he had denied to the House of Representatives as expressed in the signatures of more than two-thirds, an opportunity to consider the bill.

THE CHAIRMAN.—That story suggests that in order to accomplish the reform which you mentioned, it may be necessary to raise that two-thirds point a little bit higher.

MR. FITZGERALD.—No. The veto power is very effective.

MR. PARSONS.—Well, there was a rule, was there not — That is, under the rules of the House of Representatives, it takes a two-thirds vote to suspend the rules, and there was a case where they passed the River and Harbor Appropriation Bill under the suspension when it was not read at all, without any chance of amendment.

MR. FITZGERALD.—Those things will be done, any way, but it would be very unlikely if a bill like the one I have described were passed and were afterwards vetoed by the President, and in his veto message he pointed out his reasons, it would be very unlikely — in fact, it would be impossible to get the necessary votes to pass that bill over his veto.

THE CHAIRMAN.—The publicity which it would get there would have weight, of course.

MR. FITZGERALD.—You have got to have courage first, in some place, and then proper publicity.

MR. LINCOLN.—Under your plan of budget, the budget is to go from the executive to the House of Representatives?

MR. FITZGERALD.—Well, under our law, all estimates are transmitted to the House of Representatives by the Secretary of the Treasury, the heads of departments and independent establishments that do not happen to be under a head of a department, by the 15th of October; must be transmitted to the Secretary of the Treasury. He is required to classify them, arrange them properly, and if they are not presented properly, to arrange them. If the estimates are not presented he must prepare them, and there are certain requirements of the statute requiring that they must submit reference to the statute authorizing the particular expenditure, and where it is found. That comes in what is known as a book of estimates.

MR. LINCOLN.—My point was this: The House of Representatives under your plan, I believe, may lower but not increase the recommendations of the Executive. Is that correct?

MR. FITZGERALD.—Yes.

MR. LINCOLN.—Well, then, what becomes of it when it goes to the Senate? They may only lower but not increase the appropriations of the House?

MR. FITZGERALD.—Well, under that plan the Senate ought to be bound by the same rule that they might recommend within the estimates submitted, but should not have a right to include things not estimated, because I would sooner give the House the larger power than the Senate on these matters, but one House should not have a power in that respect that the other does not have.

THE CHAIRMAN.—Your plan involved having both houses bound by the same rule?

MR. FITZGERALD.—By the same rule, because if the Senate could increase or amend in regard to the recommendations you would simply transfer to the Senate all legislative power, or if

the House had that power and the Senate did not, it would completely emasculate the powers of the other body.

Mr. LINCOLN.—Would that be final, if the Senate raised the appropriations made by the House up to the amount, we will say, the Executive has proposed — is that final in your plan?

Mr. FITZGERALD.—No; when that is done, the procedure is this: The House passes a bill. It goes to the Senate, is considered in a committee and may be amended there, or, when it finally passes the Senate, is passed with certain amendments. Then the bill, with the Senate amendments, comes back to the House. Now, the House can agree to those amendments. If it agrees, they pass the bill. If not, it disagrees with them, it sends them back, and the Senate either insists on its amendments and asks the House to appoint managers to confer, or recedes from its amendments. They appoint conferees, three members from each house, and they meet and adjust their differences the best they can. They must have a complete agreement and have the House ratify the agreement which is made in the other body.

Mr. LINCOLN.—You find that Conference Committee worked satisfactory? I don't mean you — but is that a satisfactory method?

Mr. FITZGERALD.—It is the only way you can adjust the differences. It must be. It is the recognized known parliamentary method when two houses are in difference. If the two houses are in difference they appoint managers or representatives and they meet and agree upon something. Either one side yields to the other, or they compromise the difference, and then the two houses must ratify that compromise. And then that becomes a final law.

Mr. C. NICOLL.—You said there were eight committees that made appropriations. What are they?

Mr. FITZGERALD.—Why, we have the Committee on Agriculture which has the agricultural bill. The Committee on Military Affairs has the army bill; that is the bill for the support of the mobile army, and has the military academy bill. The

Naval Committee has the naval bill. The Committee on Indian Affairs has the bill for the support of the Indian Service. The Committee on Foreign Affairs has the Diplomatic Service bill for the support of diplomatic and consular service. The Committee on Appropriations has the legislative, executive and judicial, all the deficiency bills, the District of Columbia bill, the Sundry Civil Appropriation bill, and the Pension Appropriation bill.

The Committee on Rivers and Harbors appropriate for rivers and harbors.

Mr. C. NICOLL.—And the public buildings.

Mr. FITZGERALD.—I think those are the eight.

Mr. C. NICOLL.—Well, is the conference between you all?

Mr. FITZGERALD.—Well, what happens is this: The estimates for the Naval Establishment, excepting the Naval Establishment in Washington, that is, the administrative department, go to the Committee on Naval Affairs. Well, they pay no attention to how much revenue we are going to have. That Committee has jurisdiction of the legislation for the Navy. Now, if they recommend and pass a bill to extend the activities in some way of the Navy Department, when it comes to recommend money to carry out the service, why, they are in sympathy with the department head as to the amount required. The Committee on Appropriations has no legislative jurisdiction. We cannot recommend any legislation of any kind. We only can consider the estimates for money for some service which is authorized by law.

Mr. C. NICOLL.—Don't these Committees get together for the purpose of making their appropriations according to the revenues?

Mr. FITZGERALD.—No. We tried it informally, to get the Chairman of these Committees together and agree, but every Committee but the Committee on Appropriations, insisted that there was no way by which they could reduce the sums appropriated for their departments, so the economies had to be effected by the Committee on Appropriations. I have a statement which will show how that works out in one of these speeches. I put

those figures in. This is a statement I made on the 15th of March of this year.

The total appropriations made in the seven annual appropriation acts excluding river and harbor budgets, because they are not for the conduct of any branch of the service and prepared by the Committees on Agriculture, Military Affairs, Foreign Affairs, Naval Affairs, Indian Affairs — Post Office and Post Roads was the other Committee — respectively for the four year period 1913 to 1916, amounted to \$2,265,000,000; for the corresponding four year period from 1909 to 1912 they amounted to \$1,979,000,000, an increase of \$286,000,000.

Now, the estimates submitted for the period 1913 to 1916, on which they were based, amounted to \$2,264,000,000, or \$11,515,000 less than Congress actually appropriated. Outside committees in the four years appropriated for those departments \$11,500,000 more than the departments said they wanted.

The appropriations made in the fall regular appropriation not including the Pension Act, and including all deficiency acts which were prepared by the Committee on Appropriations, which has a number of these bills, for the four year period of 1913 to 1916, amounted to \$718,000,000, and for the corresponding period 1909 to 1912, to \$799,000,000, a reduction actually made during the latter period under the earlier period of \$81,000,000, or about ten per cent. The estimates submitted to Congress during the period 1913 to 1916, on which those acts were based, amounted to \$819,000,000, or \$100,950,000 more than Congress actually appropriated, so that the Committee on Appropriations in the four years recommended appropriations in the bills that it had control of \$100,000,000 less than the departments asked for, while these other Committees combined made them \$11,500,000 more than they asked for.

Now, I can give you an expert's explanation of why that happens. I put it in a speech I had. A man interested in the department was complaining that the service in which he was interested did not get liberal appropriations and he undertook to show why, and it is the most illuminating statement that has ever been made.

Dr. Harlan Updegraff, of the Bureau of Education, in the

American School Board Journal of May, 1912, was explaining the failure of the Bureau of Education to obtain large appropriations, and he said:

"If, during the past forty years, the Commissioner of Education had been granted lump-sum appropriations from which he could have paid salaries fairly commensurate with those paid by local public and private agencies throughout the United States, and had it been possible for him to set aside proper amounts for traveling expenses, the bureau would have made a far greater impress upon educational policy and practice. In consequence of the higher appreciation which would have resulted, it is also quite probable that the Congress would have increased its appropriations from year to year until their magnitude would have become more nearly commensurate with the high regard in which all Americans hold their public schools.

"However, there is an underlying cause for this situation in the business procedure of each of the houses of Congress. Under this procedure the estimates for some departments are acted upon by their friends at court, while the estimates for other departments are passed on by a tribunal whose main object is economy. All appropriation bills for the Department of Agriculture are prepared in the House Committee on Agriculture, and are reviewed in the Senate by the Committee on Agriculture and Forestry. This same practice also holds with the appropriations for the diplomatic service, the military service, the naval service, and the postal service. On the other hand, the appropriations for the other branches of the Executive Department are prepared by the Committee on Appropriations of the House and are referred by the Senate to its committee of like name. Quite naturally the attitude of these Committees on Appropriations toward the estimates submitted by their respective branches of the Executive Department is distinctly different from that shown by the committees which recommend the appropriations for a single department or bureau. Members of the latter class of committees have their attention centered on one particular set of governmental activities, which they hold in growing appreciation as their knowledge of the work increase. On the other hand, members of the Committees on Appropriations have their attention divided among



several departments and independent offices and commissions, all of which are more or less desirous of increased funds. Strong attachment to the work of any branch of the government service is not fostered by such a condition. Moreover, the numerous insistent demands that come upon them develop a controlling idea in the minds of those Appropriations Committees — not the great good that may come to the people through any branch of the service, but rather the desirability of cutting appropriations to the lowest possible limit in order that the party in power will not be held accountable for large expenditures. In brief, all the appropriations for the Department of Agriculture, and the principal appropriations for the War, Navy and Post Office Departments, are in the hands of their friends, while those of the remaining government offices must come before a tribunal, the chief aim of which is to keep the total appropriations, including those framed by the special committees, within certain fixed limits. It follows from this that the liberal appropriations recommended by the special committees have a tendency to lower the appropriations for the other departments, which are drawn directly by the Appropriations Committees. Had the estimates of the Commissioner of Education during the past forty years been referred in the House to the Committee on Education and in the Senate to the Committee on Education and Labor there would undoubtedly be to-day a far different story to tell. If such a reform in the procedure of the House could be carried out to-day, an increased participation of the National government in the education development of the country would probably result.”

He is absolutely correct, if the appropriations for any particular department of the government were confined to a committee that had to appropriate for no other department of the government; the expenditures were greatly increased, and that was predicted with unerring accuracy in 1879. In that period Mr. Garfield — at that time expenditures of the Federal government were about \$300,000,000, and they were proposing to distribute these appropriation bills. And Mr. Garfield, then in the House of Representatives, said:

“Let me state that the proposition to divide the Committee on Appropriations, to scatter its bills as suggested, and as was

once moved, indeed is, in my judgment, although I think it is not pending, an utterly ridiculous proposition, I believe it would cost this government \$20,000,000 if the appropriations were scattered to the several committees. \* \* \* I do say, sir, without the slightest question in my own mind of the truth of the statement, that the scattering of these appropriations as suggested by the gentlemen here will be absolutely breaking down all economy and good order and good management of our finances. It can not be otherwise."

Those predictions were borne out by what resulted following the distribution in 1885. And the same result followed in the Senate.

Mr. PELLETREAU.— May I ask a question? If the introduction of all bills containing an appropriation were confined to the lower House, would or would it not be in the interests of the State that such appropriation be not increased in the Senate?

Mr. FITZGERALD.— If they were all confined to one body?

Mr. PELLETREAU.— If the introduction were confined to the lower House.

Mr. FITZGERALD.— That would be a radical departure from —

Mr. PELLETREAU.— Yes.

Mr. FITZGERALD.— from the underlying theory of the system of government, of Federal system, of State government. Our legislative department of government has been erected upon the theory that the two Houses should have equal legislative powers, and I doubt whether —

Mr. PELLETREAU.— Wouldn't that stop log rolling between the lower House —

Mr. FITZGERALD.— No, I think not. Where that is in force, it is in the parliamentary system of government where the House of Lords now cannot do very much with the supply bills. But the overwhelming controlling reason for that is that the Commons directly represent the people and the minute they reject the important proposals of the government, the government must appeal

to the people. It makes a tremendous difference in the operation of the two systems of government. And I think one of the great difficulties that has been encountered in the attempts that have been made to work out systems that will improve conditions in our country, has been the fact that too many of those that have been studying and proposing these changes, have become enamored of the parliamentary system, or the system in vogue in the parliamentary government. They are trying to engraft on our system conditions irreconcilable with our system of government. There the executive department is so intimately related to the legislative department of the government, and it is so directly responsive to the will of the country, it makes a big difference. We have a situation, for instance, where we will elect a Governor for two years and a Senate for two years, and we may in the middle of his term change the political complexion of the lower body, and we must try and so adjust our arrangements as to safeguard against an absolute deadlock, and under these circumstances the Assembly might refuse to recommend appropriations that properly should be made. Now, the Senate, in that instance, would be the safeguard, because it would compel an adjustment by amendment.

If the two bodies of the Legislature were politically the same, and different from the Executive — if the Legislature refused to make the appropriations that the Executive demanded, believed essential, it would be easy to fix responsibility upon one of the parties.

But we might have that situation where the lower body would be of one political complexion and the Executive and the upper body of the same but different from the lower body, and you have a very unfortunate condition from the standpoint of the public, however pleasant it might be from the standpoint of a man active in political management. I think that what we should try to do is to more emphatically fix responsibility for the initiation upon the Executive, and try to emphasize to the Legislature the importance of its duties, and simply put the checks that now become necessary upon them.

You see, when we consider the history of Anglo-Saxon government the Commons were never granting supplies to the Crown

that it did not want. There was a continuous struggle on the part of the Crown to get grants from the people, and the people to secure concessions and rights from the Crown, and they bartered one thing for the other. The Commons would not give the Crown its necessary grant of supplies unless it would remedy certain grievances. We have not that situation. Our Legislatures are not trying to get the Executive to give certain redress to the country or certain relief, and it is the difficulty of trying to take a system based upon that underlying principle of government and engraft it on ours which is so different, which separates distinctly and completely the three departments of government. What should be done, in my opinion, is taking our present system, to have a proper appreciation of the evils that have grown up, and direct remedies to the correction of the evils that have grown up; not to attempt to completely reconstruct a new system, and tear down and wipe out the existing one.

Mr. WAGNER.—I was going to ask you whether you believed that the other elective officers of the State should also be dependent upon the judgment of the Executive as to the appropriations which they asked for.

Mr. FITZGERALD.—That is one of the difficulties that arise under our present State government, and it differentiates this situation completely from the situation in the Federal government. In the Federal government, the President selects the heads of his departments, and it is his administration. Now, under our existing Constitution and present ballot, we might very easily have an Executive and several important State officials belonging each to a different political party.

Mr. WAGNER.—That has happened recently in the State.

Mr. FITZGERALD.—Yes; it happened, but there might be—it would be more easy under our new ballot. You might have a man representing either political party in the State government, and that is one of the difficulties to which I have given a good deal of thought to try and work out a solution. We always make a mistake as soon as we yield to this suggestion that you can trust the Executive. Now, that is the common expression in the Legislative

body when you want to make a recommendation. You can trust the Executive. You can't do it safely. I am not talking about the particular politics of any man, but that is the greatest mistake that is made. You cannot trust the man to forget all his political skill and education and to ignore his political associates and his environment. I would not trust any Executive any further than would be necessary. I would mark out the law so distinctly that he must follow it, and make him administer that law. If you give him wide administrative powers and as you do, you get further and further away from our whole system of government, and the Federal statutes are full of these laws regarding estimates and appropriations and submissions due entirely to the fact that Congress has inevitably found it necessary to compel the Executive Department of the government to follow certain definitely laid down lines.

THE CHAIRMAN.—The point of that, you mean, Mr. Fitzgerald, is that if an attempt was made to carry out the suggestions that you have made here this afternoon, and to impose upon any officer in the executive the responsibility of preparing a budget, you mean that ought to be done so precisely as to make it his duty and to leave no possibility of discretion.

MR. FITZGERALD.—Yes, and what I say about trusting the Executive was this: Just for the sake of argument, suppose you had a Republican Governor, a Democratic Comptroller and a Progressive or some other Attorney-General, and the Governor alone, under our system had the right to submit the estimates for the moneys required to administer the public service. No man is sufficiently superhuman, under those conditions, to be able to forget that the Comptroller is a Democrat and not a Republican, and the Attorney-General is not a Republican, or whichever it would happen to be. And he would not be in the same close community of relationship and touch, the same notions, and he might, by his action, and the restraint you put upon the Legislature, vitally cripple the Comptroller's Department in the performance of very important functions.

So that under our system that problem arises as to the origin of the estimates.

Not that I mean that men who become public officials are in any way degenerate, but the fact is that a man who is a public official is human all the time. It is not as easy to reconcile men of different political faiths, as to the appropriateness of certain things in different departments under different men.

THE CHAIRMAN.— You realize one of the problems before the Convention is the very question whether we should not change that system so that it would make these different elective officers appointive, and avoid this very possibility of divergence you have just spoken of. Is it your opinion that the two questions would interlock that question with the budget question somewhat?

MR. FITZGERALD.— Well, no. I would not like to express that. I have read something of the history of the State of New York, and concentration of the power of appointment, and I have such positive views that I don't think I ought to interject.

MR. D. NICOLL.— What difficulty is there in a Republican Governor and a Democratic Comptroller or Attorney-General on the board to make a budget? They are all engaged in trying to administer the government economically.

MR. FITZGERALD.— The very point of objection, Mr. Nicoll, is this: That you diffuse responsibility and power. If the system could be worked out where the Executive had to stand out before the people of the State as the man responsible primarily for the fiscal condition of the State, you would have a situation then where if the people were grossly dissatisfied, you would know whom to hold responsible.

MR. D. NICOLL.— The Board of Estimate in the city of New York under Gaynor's administration was composed of different parties, and it often has been, don't you know?

THE CHAIRMAN.— It has raised considerable difficulty.

MR. NICOLL.— Yes, but they worked something out of it.

MR. FITZGERALD.— But they usually, the public at least, the city of New York, usually see the Mayor more than anybody else, whether he is the responsible person or not.

Mr. WAGNER.—Under our present system, isn't the Governor in the end responsible for the appropriations? He has under our law the right to veto any particular item of the appropriation bill, any small or large item, so that in the end he is the final judge of the appropriation and supply bill, and I was wondering what difference you thought it made whether he, in initiating the appropriations, exercised his veto power, or in the end, that is, after both houses of the Legislature have acted upon it, and then he used his veto power. He exercises the power you propose to give him now in the end. You simply want him to have the power in the beginning. I was wondering what difference that would make. The responsibility is the same, as I see it.

Mr. FITZGERALD.—It makes it in this way: That in order that a legislative body should do its work intelligently, or more intelligently and with better results, it should have, when it starts, a concrete, definite proposal of what is required for the various departments and what the sources of revenues to meet those expenditures are. And if you don't have that at the beginning, you may be lucky enough to hit things so that they fit. But you get much better results if you could have that all in advance. The problem to get that, to prevent it being juggled at the outset and then added to, is one of the things —

Mr. WAGNER.—The difficulty, I think, the financial committee of the Legislature in the past has had, is the lack of knowledge as to the desirability or at least the necessity of appropriations. Now, supposing the power of making a preliminary inquiry was given to the Comptroller or the Secretary of the Treasury, as you have in the Federal government, if he were an elective officer, so that he would not be one of the Cabinet members, then the question of his superiority would not arise. But here is a Comptroller and elective officer directly responsible to the people. Supposing the power was given to him to make an original inquiry into all the appropriations asked for, and to transmit a report for the necessity for the appropriations, and his opinion and all the facts, to the legislative body, and upon that the Legislature is to make its appropriations finally and then after that the Governor would again have the final veto power.

Mr. FITZGERALD.—Well, in the Federal system we work it a little differently, in that after the estimates are submitted, the heads of the departments and heads of the bureaus are subjected to a pretty thorough examination as to the necessity. For instance, in the last session of Congress, the Committee on Appropriations took 5,000 printed pages of testimony, and they got pretty accurate information. Anyone who has had anything to do with it knows that if there was some independent source of power, or body that could investigate along certain lines, it would be a great help. For instance, it is very difficult for a committee of a legislative body to know, if it is proposed to spend \$300,000 for an addition to a hospital, whether \$300,000 would be the proper sum, or \$100,000 would not be ample. And if there were some place, a competent independent corps, which would first sift these various proposals and collate such information as would be valuable, it would be of immense help. From time to time it has been proposed in Washington that there should be attached to the Committee on Appropriations a permanent force which would have the power to continually make investigations in the various departments and collate information for the Committee.

Mr. WAGNER.—Just the things you have just mentioned. The Department of Efficiency and Economy which unfortunately in my judgment, was abolished as a department, that department was a very effective instrument in getting just that sort of information to the Legislature, which it could not get in any other way, and it discovered that a number of requests made for hospitals, for instance, were absolutely unnecessary; in one case where they asked for the equipment, although the plans had not even been drawn for the construction of the buildings, and other extravagant demands which could not have been discovered by a mere asking of questions of the head of the hospital because they always have ways of justifying it. But the Commissioner of Efficiency and Economy sent inspectors around, and in that way they got first hand information, which was of great assistance to the Legislature, and I think at the present time what is needed more than anything else is just that sort of information.

Mr. FITZGERALD.—I think one of the things that are perhaps most difficult at times in Congress is for men to be able to deter-



mine just what ought to be done about certain matters, due entirely to inability to obtain information of the character that ought to be had. Sometimes it becomes very largely a guess, which is often resolved largely upon the personality of the head of a department, if a man has so impressed himself upon the Committee that it is inclined to give him the benefit of the doubt in situations where they assume that personal equation decides it. Others, where the committee for one reason or another is distrustful, why that may determine the refusal to grant something that perhaps should be done. But that is a detail, the working out of which is dependent somewhat on the other. There is no doubt that the most effective thing to keep an administrative officer legitimately in check in the expenditure of money is the fact that what is done is checked up afterwards.

I have not any doubt that from at least ten to fifteen million dollars has been saved in the construction of the Panama Canal as a result of the policy that was initiated. Mr. Taft was Secretary of War when General Goethals was put in charge of the work, and they requested the Committee on Appropriations to visit the Canal Zone, and personally investigate what was being done, and take the testimony on the zone, and they have been down there every year but one year, and both General Goethals, and those who are intimately acquainted with what was done, are of that opinion, that that effective close investigation and check has resulted in the elimination of waste and cutting off of things that saved about \$15,000,000.

Mr. SCHURMAN.—I wanted to ask if I understood you aright in saying that for the Federal government, with its unitary executive departments, you believe it would be an advantageous reform if some such method of preparing the budget were adopted, as that prescribed in the law of the Confederate States, extracts from which you read?

Mr. FITZGERALD.—Oh, I think I have several times expressed the opinion in the House of Representatives that the power to initiate expenditures should be considerably curtailed; that is, the individual initiative, and I think that is important.

Mr. SCHURMAN.—That clause, as I understood it—they provided that the executive departments should submit estimates to the Confederate legislature.

Mr. FITZGERALD.—Provided that the departments could not appropriate money unless submitted by the President or the heads of departments except by a two-thirds vote.

Mr. SCHURMAN.—Now, would you say that would be a wise measure of reform, for Congress, for the United States, would you think that a wise policy to adopt in a State if the State also had a unitary executive department?

Mr. FITZGERALD.—Well, of course, my experience has been limited to the Federal government, and I am not sufficiently informed as to the detailed operations of the Legislature, to express an intelligent opinion. I speak from my own experience and knowledge in the other field, but it differs, the procedure differs radically, I am quite certain, in this State and in Washington.

Mr. SCHURMAN.—I understand that; I understood that. I was trying to follow you.

Mr. FITZGERALD.—I have not the slightest hesitation in saying that much better result would be obtained if the individual in the two houses of Congress could not initiate expenditure by increasing the amount proposed by the Executive, or proposing expenditures that the Executive did not wish, but I would not make that absolutely impossible, but would make it so difficult, and loading him down, that it would only be done under the most peculiar and extraordinary circumstances.

Mr. SCHURMAN.—I should think, then, if we had a State with a unitary executive department, the chances are that that would also be a good measure of reform, to begin with?

Mr. FITZGERALD.—In the State government, you have to have a check on that, that we have not in the Federal government, the veto power of the Governor over the item in the appropriation bill. If the Legislature puts something in the Supply or Appropriation bill that is not asked, the Governor has the veto power. We do not have that in the Federal government.

Mr. SCHURMAN.—I was impressed with what you said about the importance of the Legislature having the Governor's opinion in advance.

Mr. FITZGERALD.—Well, I think that is true. The man that is to appropriate the money ought to know the opinion of those who administer the service, as to what is needed and how it should be expended because without that information they are not in a position to determine. Then when that is explained they decide just what they will or will not permit the administrative department to do.

Mr. PARSONS.—Would you approve in the Federal government that the Cabinet officers have seats in Congress?

Mr. FITZGERALD.—I am not in sympathy with that and I don't think it would be very advantageous. I think the best article ever written favoring that was written by President Wilson in about 1882 or 1883, in a magazine; I think it is known as the *Overland Monthly* or *Overland Journal*. He advocated that very thoroughly. But I don't see how it would help. Now, this is what would happen if we gave the members of the Cabinet a seat in the House of Representatives. The Secretary of War to-day, for instance, would prepare an elaborate speech in favor of what he believed to be desirable reforms in the Army. And he would have the stage all set and the speech on the wires and set up on the boards throughout the country. And he would go to the House of Representatives and make a speech advocating his side of the question that would get a publicity that would be unique and nobody who answered him would be given any attention whatever, and it would be the most effective way for Executive coercion and domination that could be urged in the Legislature of the country. Where the Cabinet members have a seat in the legislative body, you see their position is so different. They are like the chairman of a committee who had a bill. When the House of Commons resolves itself into the committee on supply and they reach the estimate of the War Department, the Secretary of War is in charge, associated with the Chancellor of the Exchequer of that portion of the budget, and then he is grilled and hammered, and if a proposal is made to strike out a certain grant,

he must defend it, and if it is an important matter and he is defeated, he submits his resignation, or it might be sufficiently important to compel the whole government to go out; but just to give these members of the Cabinet a right to come in and lecture and browbeat and overawe and develop public opinion so as to coerce the Legislature, we have enough of that already and we would not get anything effective. He would have the sole right as a member of the House, and if somebody asked a question that it would be embarrassing to answer, he would exercise the right of a member of the House and decline to yield.

MR. PARSONS.—In regard to your suggestion of having the Executive prepare the appropriation bill, what would you think of having the officer there to answer questions?

MR. FITZGERALD.—He doesn't prepare the appropriation bills. He does in the parliamentary system. He prepares the appropriation bill and he brings it in and must put it through, but with us he doesn't prepare the appropriation bill.

MR. PARSONS.—But supposing he did, as you suggested —

MR. FITZGERALD.—Then you completely revolutionize our system of government. You are intermingling the Executive and the legislative branch, and you are breaking down one of those divisions we consider essential.

THE CHAIRMAN.—I think what Mr. Parsons suggested was this: Suppose with a view to making the estimates which you just stated were apt now to be so high and irresponsible, suppose Congress assumed the power to call the head of the department in, whose estimate it was, and to ask him questions in public on it, what effect do you think that would have upon the future responsibility of the officer in making similar estimates?

MR. FITZGERALD.—I don't think it would be effective. I have sat for sixteen years in committees where five men have tried to get information out of members of the Cabinet.

THE CHAIRMAN.—That was not in public.

MR. FITZGERALD.—It does not make much difference. You would have 434 men in the House, and any one of them had a

right to question this man. It is absolutely impossible for more than one man to conduct an intelligent and illuminative examination merely by the asking of a question at random here and there. I think the Secretary has seen copies of hearings in Congress — I have — where ten or twelve men would sit —

THE CHAIRMAN.— I have been before committees, but the trouble is they are all secret.

MR. FITZGERALD.— and the Secretary would be asked a question and somebody would suggest that was not fair, and somebody else would intervene and there would be three or four printed pages of controversy between the members of the Committee, and then you would find a place where the Secretary would say, “ Well, gentlemen, I have prepared a written statement which fully explains this matter, and with your permission, I will put it in the record,” and that is the extent of the examination. Now, in the Committee on Appropriations the arrangement is a little different; by long practice, which has become fixed, working with sub-committees of five a person who is called upon to give information, is questioned by the chairman, and he conducts the investigation with slight interruption until he has completed his investigation, and then any other member of the committee who wishes to bring out additional information questions. But you could not bring a member of the Cabinet into the House of Representatives and go through that. It takes sometimes three or four days in the Committee.

THE CHAIRMAN.— My suggestion is that possibly the fact that such an examination was public would make the head of the department better prepared.

MR. FITZGERALD.— They are all printed. It doesn't have any effect on them, and the advantage of the man who has the floor in the legislative body over the unfortunate individual who tries to ask him questions is so great that that would be the most enjoyable part of the day's work for the member of the Cabinet, to come down and show the members of the legislative body how very little they did know. And it would get so that it would be only the unusual crank or pestiferous individual who would have the temerity to question the head of the department, because nobody wishes,

unless his skin is pretty thick or he had reached that stage where he doesn't appreciate it, to be humiliated by smart answers of some one, or by the asking of a question which can be answered in such a way that the mere manner in which it is answered, although the language is not offensive, is so completely demoralizing to the questioner that he subsides. And then again, very frequently in these investigations, even the best tempered men like myself have our tempers ruffled in the committee room and the clashes are very keen and usually adjusted, but some of them would precipitate a riot if they occurred in the House of Representatives.

Another thing would be, that after the novelty of the thing wore off, why, you could not get a corporal's guard to hear the great majority of the members of the Cabinet answer questions in the House. A baseball game would break the meeting up for lack of a quorum. And it comes down to this: That a great body is ineffective to do that detail work, and it must be done by a comparatively few persons who will concentrate to do their work.

Now, if a member of a Cabinet brought in an appropriation bill, and had charge of the bill, and was questioned on the floor, and reached an item, and a motion was made to strike out the paragraph, for he is not in a position to brusquely refuse to answer questions, must justify that or have it voted out on him you have an entirely different proposition.

But just to make the statements, I have known members of the Cabinet who would paint such a glowing picture in the estimates they would present, and then escape from any real questioning or investigation that I think the result would be worse than at present.

MR. PARSONS.—Presumably you would have the examination by the Committee first. But doesn't it sometimes happen in the House of Representatives that there is a difference of opinion between the members of the Committee and other members of the House as to just what the Cabinet officers did mean, and in those circumstances wouldn't the House be aided by having the Cabinet officer there to be heard in response to questions by the whole House?

MR. FITZGERALD.—Well, I have known that to happen, that members of a Committee were under suspicion of attempting to

do something detrimental to the public service. Probably I have been in that position myself, but I know that some men have complained that certain examinations in the Committee on Appropriations reminded them of a criminal being cross-examined by his own attorney and the judge, as well as the prosecuting officer; but it has always been under circumstances where the members of the Committee radically differed with the head of the department or attempted to obtain information which they believe exists, and that the member of the department is reluctant to give.

MR. PARSONS.—I didn't mean to suggest the Committee was under suspicion.

MR. FITZGERALD.—It is a fact, though.

MR. PARSONS.—I didn't mean to suggest that. It is very difficult sometimes for a person who had not been in the Committee to find out just what the Cabinet officer had intended. You mentioned a moment ago that a great many questions would be asked, and finally the thing would be cleared up by a written statement he would present. Sometimes he has not written a statement, and you have to make up your mind as to what he meant from the hearing as printed. And it is very difficult at times.

MR. FITZGERALD.—Of course, if the object is to make it certain that a head of a department will get all the money he thinks he ought to have, that will help him very materially. But that is not the evil that every one complains of. In spite of all the supposed handicaps under which the department labors, our expenditures every one concedes are excessive, greater than they should be. Now, if you permit the head of the department in addition to all the other ways he has of influencing the members of committees in Congress to come in on the floor of the House under conditions in which he is able to create a public opinion, whether correct or incorrect, in order to do what? In order to defeat the recommendations of a Committee that is trying to protect the public treasury. That is the only thing. That is what it is. No one suggests it is necessary in Congress for the head of the department to come in, in order to get the things the

Committee recommends; but it is to help him to get the things the Committee refuses to recommend. By the time they got finished, there would not be much left to distribute.

MR. PELLETREAU.—Mr. Fitzgerald, if the Governor should be clothed with the power to submit a statement to the Legislature, wouldn't it be wise that there be an official or bureau performing the functions of Commissioner of Efficiency and Economy, I think it was called, under the control of the Governor, appointed by him, and answerable to him?

MR. FITZGERALD.—No; I should take it away from the Governor. It ought to be independent. It ought to be for the benefit of the legislative body, not the administrative body. They have all the knowledge and sources of information they need. What is needed, if anything is needed, are independent means of information for the legislative body. That has been the experience I have had in the Federal government.

MR. PELLETREAU.—Then I understand you to say there should be such an official or bureau —

MR. FITZGERALD.—No; I say anything that aids in furnishing information — the experience in Congress is that it would very materially help the committees in Congress if there was some force or body responsible and answerable to the House that would obtain information independently; not that the departments and the men in them are dishonest, but there is frequently room for a very wide difference of opinion as to the advisability or propriety of doing a thing one way or another, and the most effective check is the obtaining of information from independent sources.

THE CHAIRMAN.—Don't feel that you must stand up, Mr. Fitzgerald, you have been standing a long time.

MR. FITZGERALD.—I just as soon stand.

MR. SCHURMAN.—Have you some extra copies of that speech?

MR. FITZGERALD.—I have promised to send some to the Chairman.

THE CHAIRMAN.—What is that?



Mr. FITZGERALD.—I said I would send you some of those speeches.

THE CHAIRMAN.—I hope you will. We will be very glad to get them.

Have any of the members of the committee any further questions to ask Mr. Fitzgerald?

I am sure that I voice the sentiments of every member of the Committee in telling you, Mr. Fitzgerald, that we are very much obliged to you for coming and for what you have told us in references to the operations of the Federal Congress, and I feel certain it will be of great usefulness in the deliberations of the Committee.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 16

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#### REPLY OF THE ATTORNEY-GENERAL TO RESOLUTION OF THE CONVENTION

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STATE OF NEW YORK

OFFICE OF THE ATTORNEY-GENERAL

ALBANY, June 24, 1915

HON. ELIHU ROOT, *President of the Constitutional Convention,  
Capitol, Albany, N. Y.:*

DEAR SIR.—Some time ago there was transmitted to this department a copy of the resolution of the Constitutional Convention:

“That the Attorney-General be requested to furnish to this Convention, with all convenient speed, the following information relative to matters pending before the Court of Claims:

“1. The number of claims pending, classified by the years in which the claims were filed.

“2. The amount involved in the claims so filed, also classified by years.

“3. The number of claims adjusted without recourse to

the Court of Claims or Board of Claims in each year of the last five years.

" 4. The total amount paid by the State in satisfaction of claims in each year of the last five years.

" 5. The geographical distribution of pending claims, stated by counties.

" 6. A classification of pending claims by number and amount involved, showing:

" a. Claims arising from appropriations made by the State in the course of the Barge canal improvement.

" b. Cases on contract growing out of the Barge canal improvement."

Accompanied you will please find charts (by counties) upon which are registered the number of pending claims classified by years, the nature of the claims and the amount claimed up to May 1, 1915.

You will also find charts showing the classification of claims by counties, the character of claims by counties, the number of claims and the amount claimed as of all claims now pending in the Court of Claims in the State as a whole.

The resolution requested classification of pending claims by number and amount, showing claims arising from appropriations and because of contracts in connection with the Barge canal improvement. The data furnished not only shows this character of information concerning the Barge canal, but concerning the old canal and other classifications which are enumerated hereinafter, viz.:

OLD CANAL:	Number	Amount
A. Leakage and overflow.....	66	\$97,247 65
B. Damage .....	3	4,376 00
C. Claims, services.....	120	27,000 28
	<hr/>	<hr/>
Total, old canal .....	189	\$128,623 93
	<hr/>	<hr/>

#### BARGE CANAL:

A. Permanent appropriations....	865	\$51,086,312 78
B. Water rights .....	38	3,205,719 25
C. Leakage and overflow.....	662	1,017,012 41

	Number	Amount
D. Contracts . . . . .	37	\$3,570,342 77
E. Negligence . . . . .	151	565,554 34
F. Pollution, streams . . . . .	2	42,515 71
G. Closing navigation . . . . .	2	61,102 30
H. Damage to boats . . . . .	13	16,510 95
Total, Barge canal . . . . .	1,770	\$59,565,070 51
Total, both canals . . . . .	1,959	\$59,693,694 44

## HIGHWAYS:

A. Contracts . . . . .	22	\$698,740 10
B. Damage . . . . .	5	14,635 00
C. Highway damage . . . . .	2	11,462 26
D. Pro rate bond tax . . . . .	1	122 00
E. Permanent appropriation . . . . .	1	150 00
Total, highways . . . . .	31	\$725,109 36

## STATE RESERVATIONS:

A. Permanent appropriations . . . . .	7	\$294,052 00
B. Use of land and water . . . . .	1	400 00
C. Appropriation, timber . . . . .	2	82,053 17
D. Damage by animals . . . . .	8	3,270 27
Total, State reservations . . . . .	18	\$379,775 44

## MISCELLANEOUS CLAIMS:

A. Negligence . . . . .	79	\$495,246 66
B. Contract . . . . .	22	638,073 19
C. Damage . . . . .	14	90,771 03
D. Excise . . . . .	1	11,460 00
E. Salaries, employees . . . . .	9	19,094 82
F. Loss of property . . . . .	1	200 00
G. Failure to deliver goods bought at public sale . . . . .	1	82 50

	Number	Amount
H. County taxes on railway bonds	5	\$20,407 84
I. Taxes . . . . .	2	4,922 64
J. Refund of money occasioned by erroneous affixture of stock transfer stamps . . . . .	297	605,097 66
K. Refund of money erroneously deposited by county treas- urer, Kings county . . . . .	1	3,485 35
Total, miscellaneous claims	432	\$1,888,837 19

The classification above stated is particularly set out as to the individual character of claims in accordance with the resolution, by counties, each county, as stated above, carrying all the information under a separate pamphlet. For the purpose of explanation, however, it would suffice to state that the general classifications referred to above furnishes the following information:

	No. of claims	Amount
OLD CANAL . . . . .	189	\$128,623 93
BARGE CANAL . . . . .	1,770	59,565,070 51
Total, canals . . . . .	1,959	\$59,693,694 44
HIGHWAYS . . . . .	31	725,109 36
STATE RESERVATIONS . . . . .	18	379,775 44
MISCELLANEOUS . . . . .	432	1,888,837 19
Grand total . . . . .	2,440	\$62,687,416 43

The classification of claims in subdivisions above set out is in some instances not without criticism. The classification of the subdivisions under the general classification of miscellaneous claims seems to me could more comprehensively be covered by four subdivisions, such as negligence, contract, damage and taxes. Under such classification the classification of taxes would cover

any payment required by the State for local improvements to State property, erroneous taxes, etc. The same is applicable to some other classifications. However, I am submitting for your consideration the classifications in the manner in which they are found. This same criticism perhaps should be made of the classification throughout. Nevertheless the charts are comprehensive in their essentials, referring to the nature of claims, particularly in connection with the canals, which appears to be the principal business of the Court of Claims.

On the whole, the matter of the resolution is more particularly discussed than was requested. The magnitude of the work in assembling data as required in the resolution required the use of arbitrary charts and it has been found necessary to furnish the copy by manuscript rather than by type. The only information not furnished upon the charts is that requested under subdivisions 3 and 4 of the resolution.

Subdivision 3 of the resolution follows, viz.:

"3. The number of claims adjusted without recourse to the Court of Claims or Board of Claims in each year of the last five years."

Number of claims adjusted without recourse to the Board of Claims or Court of Claims for the past five calendar years and from January 1 to June 1, 1915:

YEAR	Agreements	Amount of settlement
1910.....	233.....	\$1,639,769 97
These agreements cover 318 separate parcels of land on 36 different Contracts.		
1911.....	333.....	1,741,955 03
These agreements cover 392 separate parcels of land on 51 different Contracts.		
1912.....	326.....	1,480,466 51
These agreements cover 386½ separate parcels of land on 46 different Contracts.		
1913.....	255.....	645,642 23
These agreements cover 300 separate parcels of land on 54 different Contracts.		
1914.....	212.....	854,785 71
These agreements cover 259 separate parcels of land on 60 different Contracts.		
Included in this number of settlements are 13 agreements covering 14 parcels of land appropriated for Barge canal terminals the amount of settlement for which was \$265,392.06. These agreements cover 8 different terminal Contracts.		

YEAR	Agreements	Amount of settlement
1915, Jan. 1-June 1..	51.....	\$38,831 21

These agreements cover 68 separate parcels of land on 27 different Contracts.

Included in this number of agreements are three agreements covering three parcels of land appropriated for Barge canal terminals, the amount of settlement for which was \$333.18. These settlements cover two different terminal Contracts.

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Subdivision 4 of the resolution, viz.:

“The total amount paid by the State in satisfaction of claims in each year of the last five years,” ending December 1, 1914:

1910 .....	\$257,034 40
1911 .....	745,961 35
1912 .....	516,055 44
1913 .....	1,328,217 92
1914 .....	1,039,955 13
	<hr/>
	\$3,887,224 24
	<hr/>

The claims paid in the course of these years have been, when particularly discussed as to the character of the fund payment, from the following funds: General, Old Canal, Barge Canal, and Terminal.

*Subdivision of Resolution Affecting the Department of the Attorney-General*

The resolution further requested, viz.:

“*Further resolved*, That the Superintendent of Public Works, the State Engineer and Surveyor and the Attorney-General transmit to the Convention, at their earliest convenience, the following information relating to matters pending and disposed of during each of the ten years last past, before the Courts of Claims and the Boards of Claims, so far as such information shall be of record in their respective offices, viz.:

“1. The amounts paid in each year to officers, employees, agents, investigators and representatives of such departments, respectively, for services, fees, expenses and disbursements in relation to matters before said courts or boards.



“ 2. The amounts paid or incurred for services, fees and expenses of witnesses, consulting experts, special counsel and otherwise in relation to matters before said courts or boards.”

Item No. 1 of this subdivision is fully answered by the information that there is in this department a Court of Claims bureau which until the 1st of January, 1915, consisted of the following officers and employees at the salaries hereinafter set out:

Deputy Attorney-General .....	\$5,000
Deputy Attorney-General .....	3,500
Attorney, Board of Claims bureau.....	3,000
Stenographer and record clerk.....	1,800
<hr/>	
Total, salaries .....	\$13,300
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The character of the work in this bureau of the office and the demands upon the department have been such that from time to time other deputies, as required by the Attorney-General, have assisted with the work in the Court of Claims. The second deputy (salary, \$6,000) in the administration ended January 1, 1915, devoted practically full time to cases involving matters of water power, contract cases, etc. The matter of the expenses of these men it is estimated would total between \$2,000 and \$3,000 per annum. The expenses of experts, witnesses, etc., in cases affecting canals have been taken care of by the agent in the office of the Superintendent of Public Works, and this character of information will be furnished by his department. The matter of other experts would average \$1,000 per annum.

At the present time in the effort which this department is making to relieve the congested condition of the calendar in the Court of Claims, there are six Deputies Attorney-General regularly assigned to the Court of Claims, salaries totaling \$28,000. The expenses in this department occasioned by traveling, experts other than in canal cases, and for the printing of papers in connection with appeals, will require between \$7,000 and \$12,000 for the next calendar year. In addition to the above items, there are two other deputies whose time for the greater part is occupied

in connection with cases in this court, salaries totaling \$12,000, so that there is a general demand upon this department for salaries, as estimated at this time, of \$40,000.

In addition to the figures above stated, permit me to state that in consideration of the demands above referred to, I have found it necessary to assign some cases, such as highway matters, etc., to other deputies in the department in order that they may be properly prepared and ready for trial at the earliest possible moment.

All of which is respectfully submitted.

E. E. WOODBURY,

*Attorney-General.*

## Canal System—State of New York—Claims Pending May 1, 1915

COUNTY	OLD CANAL							
	Leakage and overflow		Damage		Services, claims for overtime		Total old canal	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1 Albany .....	1	\$850 00					1	\$850 00
2 Bronx .....								
3 Broome .....								
4 Cattaraugus .....								
5 Cayuga .....	13	7,831 00					13	7,831 00
6 Chemung .....								
7 Chenango .....								
8 Clinton .....								
9 Columbia .....								
10 Cortland .....								
11 Delaware .....								
12 Dutchess .....								
13 Erie .....								
14 Franklin .....								
15 Fulton .....								
16 Genesee .....								
17 Hamilton .....								
18 Herkimer .....	1	500 25			67	\$15,373 44	68	15,873 69
19 Jefferson .....								
20 Kings .....								
21 Lewis .....								
22 Livingston .....								
23 Madison .....	2	4,414 00					2	4,414 00
24 Monroe .....			1	\$500 00			1	500 00
25 Montgomery .....	1	600 00			44	9,511 54	45	10,111 54
26 New York .....								
27 Niagara .....				2,500 00			1	2,500 00
28 Oneida .....	24	23,898 75					24	23,898 75
29 Onondaga .....	7	3,163 00		1,376 00			8	4,539 00
30 Ontario .....								
31 Orange .....								
32 Orleans .....	2	5,200 00					2	5,200 00
33 Oswego .....	1	450 00					1	450 00
34 Queens .....								
35 Rensselaer .....								
36 Rockland .....								
37 St. Lawrence .....								
38 Saratoga .....								
39 Schenectady .....	2	9,170 00			7	1,808 80	9	10,978 80
40 Schuyler .....	5	35,384 41					5	35,384 41
41 Seneca .....								
42 Steuben .....								
43 Suffolk .....								
44 Sullivan .....								
45 Tompkins .....								
46 Ulster .....								
47 Warren .....								
48 Washington .....	7	5,786 24			2	306 50	9	6,092 74
49 Wayne .....								
50 Westchester .....								
Totals .....	66	\$97,247 65	3	\$4,376 00	120	\$27,000 28	189	\$128,623 93

## Canal System — State of New York —

COUNTY	BARGE									
	Permanent appropriations		Water rights		Leakage and overflow		Contracts		Due to the fault or negligence of the State	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1 Albany.....	7	\$813,222 50			15	\$39,849 85				
2 Bronx.....										
3 Broome.....										
4 Cattaraugus.....					6	4,000 00				
5 Cayuga.....	11	86,255 07			1	200 00				
6 Chemung.....										
7 Chenango.....										
8 Clinton.....										
9 Columbia.....										
10 Cortland.....										
11 Delaware.....										
12 Dutchess.....										
13 Erie.....	4	1,910,397 24							1	\$329 52
14 Franklin.....										
15 Fulton.....										
16 Genesee.....					5	5,660 00				
17 Hamilton.....										
18 Herkimer.....					138	205,719 50	3	\$270,864 02	1	22,000 00
19 Jefferson.....	97	9,448,455 14								
20 Kings.....										
21 Lewis.....										
22 Livingston.....										
23 Madison.....			1	\$320 00	25	12,880 01			1	200 00
24 Monroe.....	77	2,460,947 69	6	26,500 00	33	31,207 34	8	1,260,801 32	19	48,039 11
25 Montgomery.....	55	454,530 86	1	3,255 00	28	23,269 83	2	27,583 39	1	100 00
26 New York.....	5	1,484,389 96								
27 Niagara.....	43	178,370 15			4	2,445 00			5	9,868 29
28 Oneida.....	98	2,417,128 25	5	13,383 60	110	48,443 58	1	24,638 02	24	25,737 68
29 Onondaga.....	43	961,104 54	1	15,000 00	53	49,491 12	1	57,387 60	25	69,775 47
30 Ontario.....	2	9,500 00								
31 Orange.....										
32 Orleans.....	92	1,974,520 94			7	10,958 14	2	247,565 36	3	2,942 68
33 Oswego.....	74	9,217,491 34	15	2,399,811 70	72	190,843 12	1	3,799 97	29	196,841 89
34 Queens.....	1	1,190,187 85								
35 Rensselaer.....	3	5,297,367 46					2	449,357 42		
36 Rockland.....										
37 St. Lawrence.....										
38 Saratoga.....	44	4,754,090 65	2	117,230 00	27	50,138 94	2	53,067 80	6	61,799 95
39 Schenectady.....	19	1,143,300 30	1	573,803 03	55	231,883 80			18	35,874 03
40 Schuyler.....	4	83,201 10			1	3,363 00				
41 Seneca.....	80	2,492,608 08							1	2,640 00
42 Steuben.....										
43 Suffolk.....										
44 Sullivan.....										
45 Tompkins.....	2	1,250 00								
46 Ulster.....										
47 Warren.....	1	1,750 00			3	920 00				
48 Washington.....	27	1,134,672 01	3	5,032 08	52	38,572 10	14	1,046,184 52	13	82,361 00
49 Wayne.....	76	3,571,521 65	3	51,383 84	17	7,167 08	1	129,093 35	4	7,044 72
50 Westchester.....										
Totals.....	865	\$51,086,312 78	38	\$3,205,719 25	662	\$1,017,012 41	37	\$3,570,342 77	151	\$565,554 34

## CANAL

DAMAGES									
By pollution of stream		Closing of navigation		To boats		Total barge canal		Total both canals	
No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
				1	\$760 61	23	\$853,841 96	24	\$854,691 96
						6	64,000 00	6	64,000 00
						12	86,455 07	25	94,286 07
						5	1,910,726 76	5	1,910,726 76
						5	5,660 00	5	5,660 00
						239	9,947,038 66	307	9,962,912 35
						27	13,400 01	29	17,814 01
				4	7,225 45	147	3,834,720 91	148	3,835,220 91
				1	666 81	88	509,455 89	133	519,567 43
						5	1,484,389 96	5	1,484,389 96
				2	1,629 30	54	192,312 74	55	194,812 74
				1	91 30	239	2,529,422 43	263	2,553,321 18
						123	1,152,758 73	131	1,157,297 73
						2	9,500 00	2	9,500 00
				2	4,288 25	106	2,240,275 37	108	2,245,475 37
		2	\$61,102 30			193	12,069,890 32	194	12,070,340 32
						1	1,190,187 85	1	1,190,187 85
						5	5,746,724 88	5	5,746,724 88
						91	5,036,327 34	91	5,036,327 34
						93	1,984,861 16	102	1,995,839 96
				1	340 23	6	86,904 33	11	122,288 74
2	\$42,515 71					83	2,537,763 79	83	2,537,763 79
						2	1,250 00	2	1,250 00
						4	2,670 00	4	2,670 00
				1	1,500 00	110	2,308,321 71	119	2,314,414 45
						101	3,766,210 64	101	3,766,210 64
2	\$42,515 71	2	\$61,102 30	13	\$16,510 95	1770	\$59,565,070 51	1959	\$59,693,694 44



## State of New York — Claims Pending May 1, 1915 — Continued

COUNTY	STATE RESERVATIONS									
	Permanent appropriation		Use of land and water by Forest, Fish and Game Commission		Appropriation of timber		Damage caused by animals		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1 Albany.....										
2 Bronx.....										
3 Broome.....										
4 Cattaraugus.....										
5 Cayuga.....										
6 Chemung.....										
7 Chenango.....										
8 Clinton.....										
9 Columbia.....							2	\$2,345 00	2	\$2,345 00
10 Cortland.....										
11 Delaware.....							1	11 50	1	11 50
12 Dutchess.....										
13 Erie.....										
14 Franklin.....	1	\$1,900 00							1	1,900 00
15 Fulton.....										
16 Genesee.....										
17 Hamilton.....					1	\$1,125 00			1	1,125 00
18 Herkimer.....					1	80,928 17			1	80,928 17
19 Jefferson.....										
20 Kings.....										
21 Lewis.....										
22 Livingston.....										
23 Madison.....										
24 Monroe.....			1	\$400 00					1	400 00
25 Montgomery.....										
26 New York.....										
27 Niagara.....										
28 Oneida.....										
29 Onondaga.....										
30 Ontario.....										
31 Orange.....							1	68 27	1	68 27
32 Orleans.....										
33 Oswego.....										
34 Queens.....										
35 Rensselaer.....							1	172 50	1	172 50
36 Rockland.....							1	75 00	1	75 00
37 St. Lawrence.....										
38 Saratoga.....	3	250,000 00							3	250,000 00
39 Schenectady.....										
40 Schuyler.....										
41 Seneca.....										
42 Steuben.....										
43 Suffolk.....							1	254 00	1	254 00
44 Sullivan.....	1	1,176 00							1	1,176 00
45 Tompkins.....										
46 Ulster.....	2	10,976 00					1	344 00	3	11,320 00
47 Warren.....										
48 Washington.....										
49 Wayne.....										
50 Westchester.....										
Totals.....	7	\$294,052 00	1	\$400.00	2	\$82,053 17	8	\$3,270 27	18	\$379,775 44

## State of York—

COUNTY	MISCELLANEOUS									
	Injury and negligence		Contract		Damage		Interest on excise money, City of New York		Salaries due state employees for services, etc.	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1 Albany.....	5	\$17,539 50	6	\$333,502 43	1	\$200 00			1	\$1,220 00
2 Bronx.....					1	1,700 00				
3 Broome.....			1	1,770 50						
4 Cattaraugus..	3	10,178 57	1	647 55						
5 Cayuga.....	1	10,000 00								
6 Chemung.....										
7 Chenango.....										
8 Clinton.....	1	5,000 00	1	14,210 00					1	500 00
9 Columbia.....	1	380 50								
10 Cortland.....	2	4,225 00								
11 Delaware.....					3	586 00				
12 Dutchess.....	2	25,137 00	1	16,323 03					1	4,645 00
13 Erie.....	8	64,978 64								
14 Franklin.....										
15 Fulton.....					1	200 00				
16 Genesee.....										
17 Hamilton.....			1	73,017 06					1	1,842 00
18 Herkimer.....	2	16,626 20							1	2,724 94
19 Jefferson.....	1	1,242 50	1	1,185 64						
20 Kings.....										
21 Lewis.....									1	150 00
22 Livingston.....			1	146,159 90						
23 Madison.....	1	5,000 00	2	1,400 00						
24 Monroe.....	7	14,270 16			2	151 55				
25 Montgomery...					1	25 00				
26 New York....					1	900 00	1	\$11,460 00	1	99 50
27 Niagara.....	2	3,305 00								
28 Oneida.....	5	23,855 00								
29 Onondaga.....	17	157,070 00	2	28,650 10	2	82,295 98				
30 Ontario.....	2	21,425 00			1	700 00				
31 Orange.....	4	33,942 40	1	3,139 75					1	1,075 00
32 Orleans.....	2	3,415 00								
33 Oswego.....	1	10,000 00								
34 Queens.....										
35 Rensselaer...	1	5,000 00								
36 Rockland.....										
37 St. Lawrence..			2	15,253 07	1	4,012 50				
38 Saratoga.....	1	10,000 00								
39 Schenectady..	4	9,615 05								
40 Schuyler.....	1	350 00								
41 Seneca.....	1	5,000 00								
42 Steuben.....	1	12,000 00								
43 Suffolk.....			1	2,309 66						
44 Sullivan.....										
45 Tompkins.....										
46 Ulster.....	1	22,691 14								
47 Warren.....			1	500 00						
48 Washington..	1	1,000 00							1	6,838 38
49 Wayne.....	1	2,000 00								
50 Westchester..										
Totals.....	79	\$495,246 66	22	\$638,073 19	14	\$90,771 03	1	\$11,460 00	9	\$19,091 82



## Claims Pending May 1, 1915 — Continued

## CLAIMS

Loss of property hired by State		Failure to deliver goods bought at public sale		Recovery of county taxes on railway bonds		Recovery of taxes		Total	
No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
								13	\$352,461 93
								1	1,700 00
								1	1,770 50
								4	10,826 12
								1	10,000 00
									6
				1	\$1,478 72			1	1,478 72
								3	19,710 00
								1	380 50
								2	4,225 00
									11
								3	586 00
								4	46,105 03
								8	64,978 64
									14
								1	200 00
									15
									16
								2	74,859 06
								3	19,351 18
								2	2,428 14
									19
									20
								1	150 00
								1	146,159 90
								3	6,400 00
								9	14,421 71
								1	25 00
		1	\$82 50			2	\$4,922 64	6	17,464 64
								2	3,305 00
								5	23,855 00
								21	286,016 08
								3	22,125 00
				1	1,091 56			6	38,173 71
								3	4,490 00
				1	7,021 31			2	17,021 31
									34
								1	5,000 00
									35
				1	9,173 63				36
								4	28,439 20
								1	10,000 00
								4	9,615 05
								1	350 00
									40
								1	5,000 00
								1	12,000 00
								1	2,309 66
									44
									45
								1	22,691 14
								1	500 00
1	\$200 00			1	1,642 62			4	9,681 00
								1	2,000 00
									50
1	\$200 00	1	\$82 50	5	\$20,407 84	2	\$4,922 64	134	\$1,208,254 18
Refund of money for stock transfer stamps								297	605,097 66
Refund of money, Kings county								1	3,485 35
								432	\$1,885,837 19

## State of New York—Total

COUNTY	CLASSIFICATION					
	Old canal		Barge canal		Total canals	
	No.	Amount	No.	Amount	No.	Amount
1 Albany .....	1	\$850 00	23	\$853,841 96	24	\$854,691 96
2 Bronx .....						
3 Broome .....						
4 Cattaraugus .....			6	64,000 00	6	64,000 00
5 Cayuga .....	13	7,831 00	12	86,455 07	25	94,286 07
6 Chemung .....						
7 Chenango .....						
8 Clinton .....						
9 Columbia .....						
10 Cortland .....						
11 Delaware .....						
12 Dutchess .....						
13 Erie .....			5	1,910,726 76	5	1,910,726 76
14 Franklin .....						
15 Fulton .....						
16 Genesee .....			5	5,660 00	5	5,660 00
17 Hamilton .....						
18 Herkimer .....	68	15,873 69	239	9,947,038 66	307	9,962,912 35
19 Jefferson .....						
20 Kings .....						
21 Lewis .....						
22 Livingston .....						
23 Madison .....	2	4,414 00	27	13,400 01	29	17,814 01
24 Monroe .....	1	500 00	147	3,834,720 91	148	3,835,220 91
25 Montgomery .....	45	10,111 54	88	509,455 89	133	519,567 43
26 New York .....			5	1,484,389 96	5	1,484,389 96
27 Niagara .....	1	2,500 00	54	192,312 74	55	194,812 74
28 Oneida .....	24	23,898 75	239	2,529,422 43	263	2,553,321 18
29 Onondaga .....	8	4,539 00	123	1,152,758 73	131	1,157,297 73
30 Ontario .....			2	9,500 00	2	9,500 00
31 Orange .....						
32 Orleans .....	2	5,200 00	106	2,240,275 37	108	2,245,475 37
33 Oswego .....	1	450 00	193	12,069,890 32	194	12,070,340 32
34 Queens .....			1	1,190,187 85	1	1,190,187 85
35 Rensselaer .....			5	5,746,724 88	5	5,746,724 88
36 Rockland .....						
37 St. Lawrence .....						
38 Saratoga .....			91	5,036,327 34	91	5,036,327 34
39 Schenectady .....	9	10,978 80	93	1,984,861 16	102	1,995,839 96
40 Schuyler .....	5	35,384 41	6	86,904 33	11	122,288 74
41 Seneca .....			83	2,537,763 79	83	2,537,763 79
42 Steuben .....						
43 Suffolk .....						
44 Sullivan .....						
45 Tompkins .....			2	1,250 00	2	1,250 00
46 Ulster .....						
47 Warren .....			4	2,670 00	4	2,670 00
48 Washington .....	9	6,092 71	110	2,308,321 71	119	2,314,414 45
49 Wayne .....			101	3,766,210 64	101	3,766,210 64
50 Westchester .....						
Totals .....	189	\$128,623 93	1770	\$59,565,070 51	1959	\$59,693,694 44

## Claims Pending May 1, 1915—Concluded

## OF CLAIMS

Highways		State reservations		Miscellaneous		Grand total	
No.	Amount	No.	Amount	No.	Amount	No.	Amount
2	\$306,547 57			13	\$352,461 93	39	\$1,513,701 46
				1	1,700 00	1	1,700 00
				1	1,770 50	1	1,770 50
2	56,503 92			4	10,826 12	12	131,330 04
1	8,026 80			1	10,000 00	27	112,312 87
5	25,385 02					5	25,385 02
				1	1,478 72	1	1,478 72
				3	19,710 00	3	19,710 00
1	28,508 44	2	\$2,345 00	1	380 50	4	31,233 94
				2	4,225 00	2	4,225 00
		1	11 50	3	586 00	4	597 50
1	5,853 74			4	46,105 03	5	51,958 77
2	21,504 50			8	64,978 64	15	1,997,209 90
		1	1,900 00			1	1,900 00
				1	200 00	1	200 00
						5	5,660 00
		1	1,125 00	2	74,859 06	3	75,984 06
2	47,187 99	1	80,928 17	3	19,351 14	313	10,110,379 65
1	11,633 05			2	2,428 14	3	14,061 19
				1	3,485 35	1	3,485 35
				1	150 00	1	150 00
				1	146,159 90	1	146,159 90
				3	6,400 00	32	24,214 01
2	11,000 00	1	400 00	9	14,421 71	160	3,861,042 62
				1	25 00	134	519,592 43
				303	622,562 30	308	2,106,952 26
1	1,025 00			2	3,305 00	58	199,142 74
3	3,519 47			5	23,855 00	271	2,580,695 65
1	301 16			21	268,016 08	153	1,425,614 97
				3	22,125 00	5	31,625 00
1	26,020 72	1	68 27	6	38,173 71	8	64,262 70
				3	4,490 00	111	2,249,965 37
				2	17,021 31	196	12,087,361 63
						1	1,190,187 87
1	9,583 37	1	172 50	1	5,000 00	8	5,761,480 75
		1	75 00			1	75 00
				4	28,439 20	4	28,439 20
		3	280,000 00	1	10,000 00	95	5,326,327 34
				4	9,615 05	106	2,005,455 01
					350 00	12	122,638 74
				1	5,000 00	84	2,542,763 79
				1	12,000 00	1	12,000 00
1	132,437 00	1	254 00	1	2,309 66	3	135,000 66
1	7,500 00	1	1,176 00			2	8,676 00
						2	1,250 00
		3	11,320 00	1	22,691 14	4	34,011 14
				1	500 00	5	3,170 00
1	1,610 00			4	9,681 00	124	2,325,705 45
				1	2,000 00	102	3,768,210 64
2	20,961 61					2	20,961 61
31	\$725,109 36	18	\$379,775 44	432	\$1,888,837 19	2440	\$62,687,416 43



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 17

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#### MEMORIAL OF THE NEW YORK STATE FEDERATION OF LABOR

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UTICA, N. Y., June 8, 1915

*To the President and Delegates to the State Constitutional  
Convention:*

GENTLEMEN.—The undersigned, on behalf of the New York State Federation of Labor, representing 700,000 organized workers, and speaking for the unorganized, beg leave to respectfully bring to the attention of your honorable body Labor's desires in the building of our new State Constitution.

Attached to and made a part of this memorial is a copy of twenty-four propositions adopted by representatives of the Organized Labor movement of the State at a conference held in the City of Albany, May 24-26, 1915. It constitutes a Bill of Rights. We earnestly petition that it be made a part of the new State Constitution. It represents advanced thought. It represents the hopes and aspirations of wage-earners for better living and working conditions in the future. We believe it will elevate all the people of the State to a higher plane and make equality before the law real, tangible and lasting. It will tend to beget confidence in government and allay industrial strife. The twenty-

four propositions are big and broad enough for all the people to stand on.

We present to you this Bill of Rights confident it will receive your earnest, sympathetic consideration. That it may become a part of your finished work and be incorporated in the fundamental law, we shall ever pray.

Respectfully submitted,

HOMER D. CALL,  
*Prest. N. Y. S. F. of L.*

EDWARD A. BATES,  
*Secretary-Treasurer.*  
*For the New York State Federation of Labor.*

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**AMENDMENTS TO STATE CONSTITUTION PRESENTED TO CONSTITUTIONAL CONVENTION BY THE NEW YORK STATE FEDERATION OF LABOR**

ALBANY, May 28, 1915.

1. Resolved, That the Constitution contain a provision as follows: "That the labor of a human being is not a commodity or article of commerce and the Legislature shall not enact a law and the courts shall not construe a law contrary to this declaration."

2. Resolved, That any act which any person may legally and lawfully do shall be held to be legal and lawful when done by two or more in consort.

3. Proposing an amendment to article 1 (section 19 and new section), providing that nothing contained in the Constitution shall be construed to limit the power of the Legislature to enact laws for the protection of the lives, health, safety, comfort or general welfare of employees.

4. For power to enable the State to insure workers against accident, sickness, invalidity, old age and unemployment.

5. To provide a State fund, to insure employers against a risk of workmen's compensation, to the exclusion of every other form of compensation insurance.

6. That there shall be a Department of Labor and a Compensation Commission (function separated) provided for in the Constitution.

7. Empowering the State and its several political divisions to

undertake such public works and engage in such industries, as they deem necessary to the public welfare for the purpose of relieving distress from unemployment or other extraordinary emergencies.

8. Abolish the power of the courts to nullify laws regularly passed by the Legislature or the voters of the State by means of referendum on the ground of alleged unconstitutionality.

9. Insure the right to trial by jury in all criminal or quasi-criminal prosecutions where the offense charged is punishable by imprisonment, including all cases of contempt of court.

10. To provide that the writ of habeas corpus shall never be suspended and that military tribunals shall not exercise civil or criminal jurisdiction over citizens while the regularly constituted State courts are open to administer justice.

11. For the extension of popular rule and control of officials by the initiative, referendum and recall.

12. Favor election of all judges. Election to take place at time no other officer is elected. Ballots to contain no party emblem. Candidates to be grouped under title of office.

13. Resolved, That this special convention of the New York State Federation of Labor declares itself in the interest of the masses of the citizenship of the State of New York against the abandonment of the annual sessions of the New York State Legislature.

14. Resolved, That the terms of the elective officers of the State of New York shall not be extended.

15. That the terms of the State Senators shall be for a period of one year.

16. Resolved, That the delegates to constitutional conventions be elected at a time when no other State officials are to be chosen and that no party emblems be used at such elections.

17. Resolved, With a view of having the members of the Legislature in a more independent position financially, this conference recommend to the Constitutional Convention the wisdom of raising the salaries of the members of the Legislature to an adequate amount.

18. To amend procedure necessary to pass a bill (now found in section 15, article 3), so as to take from the Governor the nullifying of that section by the use of emergency messages.

19. Against the State constabulary and the employment of private armed force in labor disputes. That the Governor of the State be the Commander-in-Chief of the army and naval forces thereof, and that as such Commander, he alone be empowered to call out any portion or the whole of said forces or either of them in time of need.

20. Resolved, That this conference of the Executive Council and representatives of labor of the State of New York go on record in favor of the constitutional amendment as adopted by the Legislature, to be voted upon at the coming election for woman suffrage, and that all are urgently requested to support the ratification thereof.

21. Resolved, That inasmuch as the so-called "Short Ballot" is a proposition to vest greater powers in the hands of the chief executive of the nation, states and municipalities, it is in violation of the fundamental principles of justice, democracy and freedom. The proposition should therefore not be endorsed but condemned and opposed, and it is hereby condemned.

22. Free Speech and Free Press.—Every person may freely speak, write or publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed by the Legislature to restrain or abridge the liberty of speech or of the press. Nor shall any officer or court of the State, or officer or court of any political division of the State, abridge, enjoin or restrain the liberty of speech or of the press. The question as to whether the rights of freedom of speech, or of the press have been abused, shall be determined by a jury. In all criminal prosecutions for libel, no person shall be found guilty and be punished where the matter alleged to be libelous be true unless the alleged matter was written and published with criminal motives and for wrongful ends.

23. Eight Hours.—In all cases of employment by and on behalf of the State, or any political division thereof, or in any contract for labor or for supplies, by or on behalf of the State, or any political division thereof, not more than eight hours in any twenty-four consecutive hours shall constitute a day's work.

24. Capital Punishment.—Capital punishment, that is, death penalty for crime, is hereby prohibited.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 18

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ANSWER OF STATE COMPTROLLER EUGENE M. TRAVIS  
TO A RESOLUTION OF THE CONVENTION, RELATIVE  
TO SINKING FUNDS OF THE STATE OF NEW  
YORK, DATED MAY 5, 1915

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STATE OF NEW YORK — COMPTROLLER'S OFFICE

ALBANY, June 16, 1915

*The Constitutional Convention of the State of New York, Albany,  
New York:*

GENTLEMEN: In response to a resolution of your honorable  
body dated May 5, 1915 and received June 11th, a copy of which  
follows:

MAY 5, 1915

“By Mr. Wagner:

*Resolved*, That the State Comptroller be requested to transmit to this Convention a statement showing the amount and term of all bonds issued under the provisions of Article 7 of the Constitution and now outstanding; also the amount in each sinking fund for the redemption of such bonds together with the amount which should be in each sinking fund if

such fund was maintained on a three per cent. amortization basis."

I beg to submit for your consideration the following statements:

### EXHIBIT "A"

*Condensed Balance Sheet of the Sinking Funds of the State as of April 30, 1915.*

### EXHIBIT "B"

*Statement of the Bonded State Debt, Sinking Funds, Reserves or Calculated Balances and Surplus or Excess of Sinking Fund Resources over Reserves or calculated balances as of April 30, 1915.*

#### BONDED DEBT

The total bonded State Debt outstanding as of April 30, 1915, as shown by details in Exhibit "B," was \$186,165,660.00, classified as follows:

Canal Debt .....	\$118,000,660.00
Highway Debt .....	65,000,000.00
Palisades Interstate Park Debt.....	2,500,000.00
Saratoga Springs State Reservation Debt....	665,000.00
	<hr/>
Total .....	\$186,165,660.00
	<hr/> <hr/>

On this amount the Saratoga Springs State Reservation bonds of \$665,000.00 are redeemable from General Fund revenues. In addition to this amount there has been issued since April 30, 1915, bonds amounting to \$235,000.00, making the total Saratoga Springs Reservation debt as of June 1, 1915, \$900,000.00 for which no sinking funds are maintained, the bonds being paid by appropriations from General Fund revenues.

#### SINKING FUND RESOURCES

The total of the Sinking Fund Resources available for the *interest* and *principal* of the debt (\$185,500,660.00) for which the funds were established, as shown by the balance sheet, Ex-

hibit "A," as of April 30, 1915, was \$40,568,351.32, classified as follows:

Canal Debt Sinking Funds.....	\$28,881,977.99
Highway Debt Sinking Funds.....	11,443,320.34
Palisades Interstate Park Debt Sinking Fund	243,052.99
<hr/>	
Total . . . . .	\$40,568,351.32
<hr/>	

#### SURPLUS

The Surplus or Excess of available resources over the reserves calculated in accordance with the method stated in the Balance Sheet, Exhibit "A," as of April 30, 1915, was \$28,904,706.05, classified as follows:

Canal Debt Sinking Funds.....	\$20,671,850.68
Highway Debt Sinking Funds.....	8,136,684.81
Palisades Interstate Park Debt Sinking Funds	96,170.56
<hr/>	
Total . . . . .	\$28,904,706.05
<hr/>	

#### BONDS AUTHORIZED NOT ISSUED

The bonds authorized, but not yet issued, as of June 1, 1915, amounted to \$44,899,000.00, classified as follows:

For Barge Canal Terminals.....	\$9,800,000.00
For Highways . . . . .	35,000,000.00
For Saratoga Springs State Reservation.....	99,000.00
<hr/>	
Total . . . . .	\$44,899,000.00
<hr/>	

In addition to the above bonds authorized but not issued there will be submitted to the people of the State at the next election for their consideration a proposition to issue not exceeding \$27,000,000.00 of bonds for the purpose of continuing the improvement of the Erie, Champlain and Oswego Canals.

Attached hereto find statements showing in detail the information requested.

Respectfully submitted,

EUGENE M. TRAVIS,

*Comptroller.*

## STATE OF NEW YORK — COMPTROLLER'S OFFICE

## EXHIBIT "A"

CONDENSED BALANCE SHEET OF THE SINKING FUNDS OF THE  
STATE OF NEW YORK AS OF APRIL 30, 1915  
(Details shown in Exhibit "B" following)

## RESOURCES

*Canal Debt Sinking Funds*

Investments . . . . .	\$20,639,878 29
Cash . . . . .	8,242,099 70

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\$28,881,977 99

*Highway Debt Sinking Funds*

Investments . . . . .	\$7,549,490 00
Contributions of 1914 due from General Fund . . . . .	3,367,281 50
Cash . . . . .	526,548 84

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11,443,320 34

*Palisades Interstate Park Debt Sinking Fund*

Investments . . . . .	\$97,300 00
Contributions of 1914 due from General Fund . . . . .	142,328 48
Cash . . . . .	3,424 51

---

243,052 99

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Total Resources . . . . . \$40,568,351 32

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## LIABILITIES AND SURPLUS

*Reserve for Interest Payable*

Canal Debt . . . . .	\$3,328,750 00
Highway Debt . . . . .	1,360,000 00
Palisades Interstate Park Debt . . . . .	50,000 00

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\$4,738,750 00

*Reserve for Principal*

Calculated balances April 30, 1915, which, with a fixed annual contribution payable at the end of each year and proportion with interest at 3 per cent. compounded annually during the term of each bond issue, would be sufficient to retire the principal of the bonds outstanding at their maturity for:

Canal Debt .....	\$4,881,377 31	
Highway Debt .....	1,946,635 53	
Palisades Interstate Park Debt	96,882 43	
		<hr/>
		\$6,924,895 27
		<hr/>
Total Reserve .....	\$11,663,645 27	

*Surplus*

(Excess resources over reserves as above)

Canal Debt Sinking Funds....	\$20,671,850 68	
Highway Debt Sinking Funds.	8,136,684 81	
Palisades Interstate Park Debt		
Sinking Funds .....	96,170 56	
		<hr/>
		28,904,706 05
		<hr/>
Total Liabilities and Surplus.....	\$40,568,351 32	<hr/>

## EXHIBIT

*Statement of Bonded State Debt, Sinking Funds, Reserves or  
Resources over Reserves or Calculat*

CHARACTER OF DEBT	Date of issue	Term of years	Maturity	Outstanding bonds
Canal Debt				
Sinking Fund No. 2 3% bonds Erie, Champlain and Oswego canals, chapter 147, Laws 1903. ....	Jan. 1, 1905	18	Jan. 1, 1923	\$2,000,000 00
Sinking Fund No. 3 3% bonds Erie, Champlain and Oswego canals, chapter 147, Laws 1903, chapter 302, Laws 1906, chapter 241, Laws 1909. ....	Jan. 1, 1906 Jan. 1, 1907 Jan. 1, 1908 Jan. 1, 1909	50 50 50 50	Jan. 1, 1956 Jan. 1, 1957 Jan. 1, 1958 Jan. 1, 1959	\$1,000,000 00 5,000,000 00 5,000,000 00 10,000,000 00
				\$21,000,000 00
Sinking Fund No. 4 4% bonds Erie, Champlain and Oswego canals, chapter 147, Laws 1903, chapter 66, Laws 1910. ....	July 1, 1910 Jan. 1, 1911 July 1, 1911 Jan. 1, 1912	50 50 50 50	July 1, 1960 Jan. 1, 1961 July 1, 1961 Jan. 1, 1962	\$10,000,000 00 10,000,000 00 10,000,000 00 10,000,000 00
				\$40,000,000 00
Sinking Fund No. 5 4% bonds, Cayuga and Seneca canals, chapter 391, Laws 1909, chapter 139, Laws 1910. ....	July 1, 1910 Jan. 1, 1912	50 50	July 1, 1960 Jan. 1, 1962	\$1,000,000 00 2,000,000 00
				\$3,000,000 00
Sinking Fund No. 6 4% bonds, Barge canal terminals. .	Jan. 1, 1912	30	Jan. 1, 1942	\$5,000,000 00
Sinking Fund No. 7 4½% bonds Erie, Champlain and Oswego canals, chapter 147, Laws 1903, chapter 66, Laws 1910, chapter 787, Laws 1913. ....	Jan. 1, 1914	50	Jan. 1, 1964	30,000,000 00
Sinking Fund No. 8 4½% bonds Cayuga and Seneca canals, chapter 391, Laws 1909, chapter 139, Laws 1910, chapter 787, Laws 1913, chapter 2, Laws 1915. ....	Jan. 1, 1915	50	Jan. 1, 1965	4,000,000 00
Sinking Fund No. 9 4½% bonds Barge canal terminals, chapter 746, Laws 1911, chapter 787, Laws 1913, chapter 2, Laws 1915. ....	Jan. 1, 1915	30	Jan. 1, 1965	5,000,000 00
Sinking Fund No. 10 4½% bonds Erie, Champlain and Oswego canals, chapter 147, Laws 1903, chapter 66, Laws 1910, chapter 787, Laws 1913, chapter 2, Laws 1915. ....	Jan. 1, 1915	50	Jan. 1, 1965	8,000,000 00

"B"

*Calculated Balances and Sulplus or Excess of Sinking Fund  
ed Balances as of April 30, 1915*

SINKING FUNDS				Reserve or calculated balances available for principal as of April 30, 1915	Excess or surplus of adjusted balances over reserves or calculated balances April 30, 1915
Cash and investments in funds April 30, 1915	Add Contributions due from General Fund from appro- priations of 1914	Deduct Reserve for interest payable from funds	Balance after adjustments available for principal of debt		
\$1,991,175 04	.....	\$30,000 00 60,000 00	\$1,901,175 04	\$1,017,479 37	\$883,695 67
.....	.....	\$45,000 00	.....	\$93,921 37	
.....	.....	225,000 00	.....	412,892 58	
.....	.....	225,000 00	.....	330,836 19	
.....	.....	450,000 00	.....	605,743 03	
16,641,376 28	.....	\$945,000 00	15,696,376 28	\$1,446,393 17	14,249,983 11
.....	.....	\$200,000 00	.....	\$454,051 07	
.....	.....	200,000 00	.....	404,160 06	
.....	.....	200,000 00	.....	354,753 45	
.....	.....	200,000 00	.....	306,315 60	
4,525,286 62	.....	\$800,900 00	3,725,286 62	\$1,519,280 18	2,206,006 44
.....	.....	\$20,000 00	.....	\$45,405 11	
.....	.....	40,000 00	.....	61,263 12	
349,925 95	.....	\$60,000 00	289,925 95	\$106,668 23	183,257 72
461,720 45	.....	\$100,000 00	361,720 45	\$363,122 67	*1,492 22
3,782,053 91	.....	675,000 00	3,107,053 91	357,279 60	2,749,774 31
262,612 65	.....	170,000 00	92,612 65	11,820 66	80,791 99
551,085 97	.....	318,750 00	232,335 97	35,032 10	197,303 87
316,081 12	.....	170,000 00	146,081 12	23,641 33	122,439 7 9

\* Deficit.

## EXHIBIT "B"

*Statement of Bonded State Debt, Sinking Funds, Reserves or  
Resources over Reserves or Calculat*

CHARACTER OF DEBT	Date of issue	Term of years	Maturity	Outstanding bonds
Non-Interest Bearing Debt				
Erie, Champlain and Oswego 6% canal stock .....			July 1, 1837	\$160 00
6% canal revenue certificate .....			July 1, 1873	500 00
Total .....				\$118,000,660 00
Highway Debt				
Sinking Fund No. 1				
3% bonds, chapter 469, Laws 1906.	Dec. 1, 1906	50	Dec. 1, 1953	\$1,000,000 00
Sinking Fund No. 2				
4% bonds, chapter 469, Laws 1906,	Mar. 1, 1908	50	Mar. 1, 1958	5,000,000 00
chapter 718, Laws 1907 .....	Sept. 1, 1908	50	Sept. 1, 1958	5,000,000 00
	Mar. 1, 1910	50	Mar. 1, 1960	5,000,000 00
	Mar. 1, 1911	50	Mar. 1, 1961	10,000,000 00
	Mar. 1, 1912	50	Mar. 1, 1962	8,000,000 00
				\$33,000,000 00
Sinking Fund No. 3				
4½% bonds, chapter 469, Laws 1906,				
chapter 718, Laws 1907, chapter	Sept. 1, 1913	50	Sept. 1, 1963	16,000,000 00
787, Laws 1913 .....				
Sinking Fund No. 4				
4½% bonds, chapter 298, Laws 1912,	Sept. 1, 1913	50	Sept. 1, 1963	5,000,000 00
chapter 787, Laws 1913 .....				
Sinking Fund No. 5				
4½% bonds, chapter 298, Laws 1912,				
chapter 787, Laws 1913, chapter 2,	Mar. 1, 1915	50	Mar. 1, 1965	10,000,000 00
Laws 1915 .....				
Total .....				\$65,000,000 00
Palisades Interstate Park Debt Sinking Fund				
4% bonds, chapter 363, Laws 1910.	Mar. 1, 1911	50	Mar. 1, 1961	\$2,500,000 00
Saratoga Springs State Reservation				
4% bonds, chapter 569, Laws 1909,	Mar. 1, 1912	10	*\$95,000	665,000 00
chapter 394, Laws 1911 .....				
Total Funded Debt and Sinking Funds .....				\$186,165,660 00

\* Annually.



(Continued)

*Calculated Balances and Sulplus or Excess of Sinking Fund  
ed Balances as of April 30, 1915*

SINKING FUNDS				Reserve or calculated balances available for principal as of April 30, 1915	Excess or surplus of adjusted balances over reserves or calculated balances April 30, 1915
Cash and investments in funds April 30, 1915	Add Contributions due from General Fund from appro- priations of 1914	Deduct Reserve for interest payable from funds	Balance after adjustments available for principal of debt		
\$160 00 500 00	..... .....	..... .....	\$160 00 500 00	\$160 00 500 00	
\$28,881,977 99	.....	\$3,328,750 00	\$25,553,227 99	\$4,881,377 31	\$20,671,850 68
709,702 64	\$62,624 53	15,000 00	757,327 17	83,514 39	673,812 78
.....	.....	\$100,000 00	.....	\$348,743 96	
.....	.....	100,000 00	.....	322,014 64	
.....	.....	100,000 00	.....	243,905 32	
.....	.....	200,000 00	.....	387,529 73	
.....	.....	160,000 00	.....	232,135 72	
5,335,501 51	1,980,000 00	\$600,000 00	6,655,501 51	\$1,534,329 37	5,121,172 14
1,255,451 00	1,040,000 00	\$360,000 00	1,935,451 00	\$239,250 24	1,696,200 76
416,223 57	284,656 97	112,500 00	588,380 54	74,765 70	513,614 84
359,160 12	.....	212,500 00	146,660 12	14,775 83	131,884 29
\$8,076,638 84	\$3,367,281 50	\$1,360,000 00	\$10,883,320 34	\$1,946,635 53	\$8,136,684 81
\$100,724 51	\$142,328 48	\$50,000 00	\$193,052 99	\$96,882 43	\$96,170 56
.....	.....	.....	.....	.....	.....
\$37,058,741 34	\$3,509,609 98	\$4,738,750 00	\$35,829,601 32	\$6,924,895 27	\$28,904,706 05



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

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No. 19

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#### OPINION OF THE COURT OF APPEALS—WORKMEN'S COMPENSATION LAW

STATE OF NEW YORK, COURT OF APPEALS

In the Matter of the Claim of MARIE JENSEN,  
*Claimant-Respondent,*  
for Compensation under the Workmen's  
Compensation Law

*against*

SOUTHERN PACIFIC COMPANY, Employer and  
Self-Insurer,

*Appellant.*

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(Decided July 13, 1915)

APPEAL from an order of the Appellate Division affirming an award of the Workmen's Compensation Commission.

*Norman B. Beecher*, for Appellant.

*Egburt E. Woodbury*, Attorney-General (E. C. Aiken of Counsel), for Respondent.

*Visscher, Whalen & Austin* filed brief for New York Central Railroad Company, as *amici curiae*.

MILLER, J.—The claimant's husband was killed on August 15, 1914, while employed in unloading the steamship *El Oriente* which was berthed alongside a pier in the Hudson river. When the accident occurred he was moving an electric truck upon a gangway connecting the vessel with the pier. The appellant, a corporation of the state of Kentucky, is a common carrier by railroad. It also owned and operated said steamship, which plied between New York and Galveston, Texas. It does not appear that the steamship was in any way operated in connection with a line of railroad and in its report of the accident the appellant stated its business to be "transportation by steamships engaged solely in interstate commerce." We are required on this appeal, first, to construe the Workmen's Compensation Law (chap. 67 of the Consolidated Laws) in so far as it relates to this case and, second, to determine its constitutional validity. The scheme of the statute is essentially and fundamentally one by the creation of a state fund to insure the payment of a prescribed compensation based on earnings for disability or death from accidental injuries sustained by employees engaged in certain enumerated hazardous employments. The State fund is created from premiums paid by employers based on the pay-roll, the number of employees and the hazards of the employment. The employer has the option of insuring with any stock corporation or mutual association authorized to transact such business, or of furnishing satisfactory proof to the Commission of his own financial ability to pay. If he does neither he is liable to a penalty equal to the pro rata premium payable to the State fund during the period of his noncompliance and is subject to a suit for damages by the injured employee, or his legal representative in case of death, in which he is deprived of the defences of contributory negligence, assumed risk and negligence of a fellow servant. By insuring in the State fund, or by himself or his insurance carrier paying the prescribed compensation, the employer is relieved from further liability for personal injuries or death sustained by employees. Compensation is to be made without regard to fault as a cause of the injury, except where it is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or another or results solely from his intoxication while on duty. Compensation is not based on the rule of damages applied in negligence

suits but in addition to providing for medical, surgical or other attendances or treatment and funeral expenses, it is based solely on loss of earning power. Thus the risk of accidental injuries occurring with or without fault on the part either of employee or employer is shared by both and the burden of making compensation is distributed over all the enumerated hazardous employments in proportion to the risks involved. So much for the general outline of the scheme against whose justice or economic soundness nothing, that occurs to me, can be said.

The particular provisions requiring construction are the following:

“Section 2. Application. Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:

Group 8. The operation, within or without the State, including repair, of vessels, other than vessels of other states or countries used in interstate or foreign commerce, when operated or repaired by the company.

Group 10. Long-shore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.”

“Section 114. Interstate commerce. The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that such employer and his employees working only in this state may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employees.”

It is claimed that loading and unloading are included in "operation" and that, therefore, the case falls within Group 8, which excepts vessels of other states or countries used in interstate or foreign commerce, but the specific enumeration of longshore work in Group 10 excludes such work from the other group.

It is next claimed that the statute was not intended to apply to employment in interstate or foreign commerce and that in case of doubt that construction should be adopted, for otherwise it would offend against the commerce clause of the Federal Constitution by imposing a burden upon such commerce. The latter claim will be noticed first. The statute does not purport directly to regulate or impose a burden upon commerce, but merely undertakes to regulate the relations between employers and employees in this State. Such regulation may, and, no doubt, does, indirectly affect commerce, but to the extent that it may affect interstate or foreign commerce it is plainly within the jurisdiction of the State, until congress by entering the field excludes State action. (*Sherlock v. Alling*, 93 U. S. 99; *Morgan's R. R. and Steamship Co. v. Louisiana*, 118 U. S. 455; *Reid v. Colorado*, 187 U. S. 137; *Simpson v. Shepard*, 230 U. S. 352; *Erie R. Co. v. Williams*, 233 U. S. 685.)

Literally construed, Section 114 makes the statute apply only to intrastate work, either done by itself or in connection with, but clearly separable and distinguishable from, interstate or foreign commerce. But, though the section is awkwardly phrased, it is manifest that a broader application was intended, else the clause "for whom a rule of liability or method of compensation has been or may be established by the congress of the United States" is meaningless. The legislature evidently intended to regulate, as far as it had the power, all employments within the State of the kinds enumerated. The earlier sections are in terms of general application, and Section 114, which is headed "Interstate Commerce", is one of limitation, not of definition. Its obvious purpose was to guard against a construction violative of the Constitution of the United States, and so it provided that the act should apply to interstate or foreign commerce, "for whom a rule of liability or method of compensation has been or may be established by the congress of the United States", only to the extent that in-

trastate work affected may or shall be clearly separable or distinguishable therefrom. In other words the legislature said that it did not intend to enter any field from which it had been or should be excluded by the action of the congress of the United States. But it is said that congress may at any time regulate employments in interstate or foreign commerce and that the case is one in which a rule "may be established", etc. Again, the spirit, not the letter, must control. If it had been intended to confine the application of the act to intrastate work, the legislature would doubtless have said so in a sentence. The words "may be" should be construed in the sense of "shall be".

One other question in respect of the application of the act remains to be considered. It is said that the appellant is a carrier by railroad and that, therefore, the Federal Employer's Liability Act of April 22, 1908 (35 Stat. L. 65), prescribes the rule governing the employment in which the deceased was engaged. As far as this case is concerned the appellant is a carrier by water. Its business is transportation by steamships, which, as far as appears, may not even indirectly be related to transportation by railroad, certainly not by any particular line of railroad. It is significant that the earlier Federal Statute of June 11, 1906 (34 Stat. L. 232), applied to "every common carrier" engaged in interstate or foreign commerce, whilst the present act applies only to carriers by railroad. There is nothing in the act indicative of a purpose to apply it to carriage by water, if it happen to be conducted by a railroad corporation, and not otherwise, to apply one rule of liability to transportation by a steamship line, if owned and operated by a railroad corporation, and a different rule to precisely similar transportation not thus controlled. The Federal Act provides a rule of liability of carriers by railroad for injury or death "resulting in whole or in part . . . by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment." The words "boats" and "wharves" may be given due effect by applying them to adjuncts or auxiliaries to transportation by railroad.

Our conclusion therefore, is that the employment in which the deceased was engaged was not governed by the Federal Statute,

that the Workmen's Compensation Act applied to it, and that the latter act is not violative of the Federal Constitution for attempting directly to regulate or impose a tax or burden on interstate or foreign commerce. We now come to perhaps the most important question in the case. Does the act violate the Fourteenth Amendment to the Constitution of the United States for taking property without due process of law?

Much reliance is placed on the decision of this court in *Ives v. South Buffalo Ry. Co.* (201 N. Y. 271.) In that case Judge Werner, referring to the appeal on economic and sociologic grounds and speaking for the court said: "We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment, but we think it is an appeal which must be made to the people and not to the courts." That decision was made in March, 1911. Following that suggestion, the legislature provided in the orderly way prescribed by the Constitution for the submission to the people of a proposed constitutional amendment and in due time that amendment was adopted on November 4th, 1913, and became Section 19 of Article 1 of our State Constitution. It is unnecessary to set that amendment forth *in extenso*, but it suffices to say that so far as the due process clause or any provision of our State Constitution is concerned the amendment amply sustains the act. However, it is urged that the reasons which constrained the court to declare the act involved in the *Ives* case unconstitutional, are equally cogent when applied to the Fourteenth Amendment. In the first place it is to be observed that the two acts are essentially and fundamentally different. That involved in the *Ives* case made the employer liable in a suit for damages though without even imputable fault and regardless of the fault of the injured employee — short of serious and willful misconduct. This act protects both employer and employee, the former from wasteful suits and extravagant verdicts, the latter from the expense, uncertainties and delays of litigation in all cases and from the certainty of defeat if unable to establish a case of actionable negligence. Both acts are said to have been based on the proposition that the risk of accidental injuries in a hazardous employment should be borne by the business and that loss should not fall on the injured employee and



his dependents, who are unable to bear it or to protect themselves against it. That act made no attempt to distribute the burden, but subjected the employer to a suit for damages. This act does in fact as well as in theory distribute the burden equitably over the industries affected. It allows compensation only for loss of earning power, but by the creation of a state insurance fund, or by the substitute methods provided, it insures the prompt receipt by the injured employee or his dependents of a certain sum undiminished by the expenses of litigation. The two acts are, therefore, so plainly dissimilar that the decision in the *Ives* case is not controlling in this.

Moreover, upon the question whether an act offends against the constitution of the United States the decisions of the United States Supreme Court are controlling. The only one of the numerous Workmen's Compensation Acts which appears to have been directly passed on by the United States Supreme Court is the act of Ohio, which contained an optional clause. (*Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571.) The single question decided in that case was that limiting the application of the act to shops with five or more employees did not result in arbitrary and unreasonable classification. This act is compulsory. The employer is subjected to a penalty for not adopting one of the three methods of insurance allowed him, and the employee has no choice at all except possibly as to whether he will enter one of the classified employments. However, except for a feature presently to be considered, the decision in *Noble State Bank v. Haskell* (219 U. S. 104), is decisive. Indeed upon close analysis it will appear that the taking justified in that case as a proper exercise of the police power was no more in the public interest than that involved in this case and that the mutual benefits to the parties immediately concerned were not as direct. In that case an act of the State of Oklahoma requiring every bank existing under the state laws to pay an assessment based on average daily deposits into a guarantee fund to secure the full repayment of deposits in case any such bank became insolvent was sustained not merely under the reserve power of the state to alter or repeal charters but as a proper exercise of the police power. Solvent banks were thus required to pay money into a fund for the direct benefit of others, the banks

benefiting only indirectly from the supposed benefit to commerce and the greater stability of banking. In this case the mutual benefits are direct. Granted, that employers are compelled to insure, and that there is in that sense a taking. They insure themselves and their employees from loss, not others. The payment of the required premiums exempts them from further liability. The theoretical taking no doubt disappears in practical experience. As a matter of fact every industrial concern, except the very large ones who insure themselves, have for some time been forced by conditions, not by law, to carry accident indemnity insurance. A relatively small part of the sums thus paid actually reached injured workmen or their dependents. With the economic saving of the present scheme, insurance in the long run should certainly be as cheap as under the old wasteful plan, and the families of all injured workmen, not a part only, will receive some compensation for the loss of earning power of the wage earner. We should consider practical experience as well as theory in deciding whether a given plan in fact constitutes a taking of property in violation of the constitution. A compulsory scheme of insurance to secure injured workmen in hazardous employments and their dependents from becoming objects of charity certainly promotes the public welfare as directly as does an insurance of bank depositors from loss.

But for the matter now to be considered we need not look farther for a case controlling upon us and in principle decisive of this. Whilst the *Noble State Bank* case was referred to in the *Ives* case, it was not controlling for the reason that the State Constitution was involved and it was not in point as an authority because of the essential differences in the act then before the court, already pointed out.

A point was made on oral argument that the act was unconstitutional for depriving an employee injured by negligence imputable to the employer of a right of action for the wrong. Of course, the employer can not be heard to urge the grievance of the employee (*Jeffrey Mfg. Co. v. Blagg, supra*), but exemption from further liability upon paying the required premium into the State fund is an essential element of the scheme, and if the act be unconstitutional as to the employee, the employer would be deprived of that exemption and thus would be directly affected

by the unconstitutionality of the act in that respect. It is not accurate to say that the employee is deprived of all remedy for a wrongful injury. He is given a remedy. To be sure the compensation or recovery is limited, and that in a sense may possibly constitute a taking, but if so, it is his contribution to an insurance scheme designed for his benefit, and may be justified on precisely the same grounds as the contribution exacted of the employer has been. When he enters into the contract of employment, he is now assured of a definite compensation for an accidental injury occurring with or without fault imputable to the employer and is afforded a remedy, which is prompt, certain and inexpensive. In return for those benefits, he is required to give up the doubtful privilege of having a jury assess his damage, a considerable part of which, if recovered at all after long delay, must go to pay expenses and lawyers' fees.

Moreover the act does not deal with intentional wrongs but only with accidental injuries, and no account is taken of the presence or absence of negligence attributable to the employer. In the way modern undertakings are conducted, it is rarely possible to trace personal fault to the employer, but he has been held liable for wrongs of others under the doctrine of *respondent superior*. That doctrine has been developed by the courts to make the principal accountable for the conduct of his affairs, though it must be remembered that it does not rest on the doctrine of agency. No one has a vested right under the constitution to the maintenance of that common law doctrine, which undoubtedly may be extended or curtailed by the legislature. No one doubts that the doctrine of assumption of risk and the fellow servant doctrine, also developed by the courts under different conditions than those now prevailing, may be limited or entirely abrogated by the legislature. Acts having that effect have been sustained by repeated decisions of this court. The power to limit or take away must also involve the power to extend. At the common law the servant was held to assume by implied contract the ordinary risks of the employment, including the risk of a fellow servant's negligence, and even of negligence imputable to the master if the danger was obvious, or with knowledge of it the servant voluntarily continued in the employment. It would not be a great extension of that doctrine for the legislature to provide that the

employee should assume the risk of all accidental injuries, and if than can be done, it is certainly competent for the legislature to provide by the creation of an insurance fund for a limited compensation to the employee for all accidental injuries, regardless of whether there was a cause of action for them at common law.

This subject should be viewed in the light of modern conditions, not those under which the common law doctrines were developed. With the change in industrial conditions, an opinion has gradually developed, which almost universally favors a more just and economical system of providing compensation for accidental injuries to employees as a substitute for wasteful and protracted damage suits, usually unjust in their results either to the employer or the employee, and sometimes to both. Surely it is competent for the State in the promotion of the general welfare to require both employer and employee to yield something toward the establishment of a principle and plan of compensation for their mutual protection and advantage. Any plan devised by the wit of man may in exceptional cases work unjustly, but the act is to be judged by its general plan and scope and the general good to be promoted by it. Fortunately the courts have not attempted to define the limits of the police power. Its elasticity makes progress possible under a written constitution guaranteeing individual rights. The question is often one of degree. The act now before us seems to be fundamentally fair to both employer and employee. Of course, I do not speak of details, which may or may not be open to criticism, but which, granting the validity of the underlying principle, are plainly within the province of the legislature. It is not open to the objections, found to be fatal to the act considered in the *Ives* case. It is plainly justified by the amendment to our own State Constitution and the decisions of the United States Supreme Court, notably in the *Noble State Bank* case, make it reasonably certain that it will be found by that court not to be violative of the Constitution of the United States.

The order of the Appellate Division should be affirmed with costs.

WILLARD BARTLETT, Ch. J., COLLIN, CUDDEBACK, CARDOZO, and SEABURY, JJ., concur. WERNER, J., not sitting.

Order affirmed.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 20

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#### REPORT OF THE COMMITTEE ON THE LEGISLATURE, ITS ORGANIZATION, ETC., RELATIVE TO PRO- POSED AMENDMENT No. 741 (Int. 697)

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Mr. Lindsay, from the Committee on The Legislature, its Organization, etc., to which was referred the Proposed Constitutional Amendment, entitled "Proposed constitutional amendment to amend Section 6 of Article III of the Constitution, in relation to the compensation and expenses of members of the Legislature" (Int. No. 697), which was read twice, and said committee recommends that the same be referred to the Committee of the Whole.

The following reasons are presented as representing the views of the majority in support of said report:

The present rate of compensation for members of the Legislature was fixed by a constitutional amendment adopted November 3, 1874. Prior to that date, under the Constitution of 1846 it had been \$3 per day, limited to \$300 for the per diem, with mileage as at present. The Constitutional Convention of 1894 only continued the existing compensation. Legislators are, therefore, now serving for a compensation considered adequate by the people of the State forty-one years ago, and based on the conditions then existing. Since then the necessary cost of living has greatly in-

ereased, so that the purchasing power of a dollar then and now is essentially different. Salaries of other officers and employees of the State have from time to time been greatly increased. It is conceded, we think, that the present compensation of members of the Legislature is wholly inadequate, and that members give their time and service to the State at an actual loss.

The Legislature is the most important department of the State, has the most important duties to perform relative to the management of affairs of the State, and its members are peculiarly the agents of the people for the performance of those duties. It is also generally conceded that the Legislature should be representative of all classes of citizens, rich and poor, exalted and humble. At the present rate of compensation it has become practically impossible for a poor man to accept the office and properly attend to its duties, and particularly is it impossible for the laboring man whose absence not only prevents him from otherwise earning support for his family, but frequently results in his being compelled, after his period of service, to seek a new position. The committee does not believe that the salary should be made so large as to make the position attractive from a merely money point of view, but it does believe that it should be sufficient to reasonably compensate for services of the member of the State, and prevent him from actual loss.

The provision in the Proposed Amendment for mileage, the committee believes to be not only fair, but that it will result in equalizing the burdens imposed upon members residing in different parts of the State. A majority of the committee are convinced that the small increase in pay proposed by this amendment will result in very many more intelligent and well-qualified persons aspiring to the position, and that the general result will be improvement in the general character and standing of the Legislature. Finally, the committee is convinced that there is a general demand for a reasonable increase in such compensation, and that the increase proposed is reasonable and will meet the approval of the voters of the State. Voters are not unjust, and do not demand that their servants shall work for them at a loss. The vote given in 1911 for the amendment to increase the salary of Assemblymen to \$3,000, and of Senators to \$3,500, with mileage at three cents per mile is no criterion. It is true that amendment was defeated, principally for the reason that nearly half the voters failed to express an opinion on the question; and it is significant that the entire seven amendments submitted that year all failed of passage. Undoubtedly the great objection to that amendment, if any, would be that it provided for actual mileage at three

cents a mile, which gave the impression that there was an attempt to make money out of the mileage over its actual cost.

Perhaps the strongest evidence of this general demand is the action taken by the New York State Federation of Labor, set forth in its memorial of June 8, 1915, which is printed as Document No. 17 of this Convention. Resolution No. 17, of said memorial is as follows:

17. Resolved, With a view of having the members of the Legislature in a more independent position financially, this conference recommend to the Constitutional Convention the wisdom of raising the salaries of the members of the Legislature to an adequate amount.

For the foregoing reasons, your committee recommends the adoption of said amendment.

(Signed)

JAMES P. LINDSAY,

For the majority of the Committee.

which report was agreed to, and said Proposed Amendment ordered printed and referred to the Committee of the Whole.

Mr. Brackett presented the following minority report:

*To the Convention:*

With great respect for the opinion of our fellow members of the Committee on Legislative Organization, we feel constrained to dissent from the report of the committee recommending the raising of the salaries of members of the Legislature from \$1,500, a year, as now established, to \$2,500.

Among others, these are our reasons for such dissent:

1. It is not a time favorable to the increase of official salaries.

It should always be remembered that the expenses of the State are paid in part by persons whose incomes are smaller than the salaries of the majority of the public servants, to which payers any increase of taxation is burdensome. This time of financial stress should not be seized upon to increase such burden in the slightest degree if it is avoidable. It is avoidable here.

2. We do not forget the claim that many salaries are now so large as to make the salary of legislators ridiculously small in comparison. Our reply is that such present disproportionately large salaries should be greatly reduced, rather than that any attempt be here made to grade the lower up to them.

The public service is no place in which to amass a fortune. It is one of the penalties of such service that the money returns therefor are, and must remain, very moderate.

3. There are two lines of reasoning with respect to salaries of those in the State service. One is that the larger salary will attract to such service a better and more efficient class of public servants; the other that such larger compensation will draw to it men who are willing to become professional politicians, with a chief view of drawing the salary regardless of the character of the service rendered.

We believe that the best service to the State in the Legislature is not rendered by the man devoting his whole time to political life and who is lured by the salary, but rather by those who, busy in their own affairs, are yet willing to sacrifice of their time in serving the public in places of honor, and who find much of their compensation for such service in the confidence and regard of the constituency electing them and in the satisfaction that comes from the consciousness of duty well performed.

It must be borne in mind that the active duties of a member of the Legislature are not continuous, do not usually engage more than about a third of the year and that they are so distributed as to leave reasonable time for a man diligent in business to care somewhat for his private affairs, while still well serving the public.

For these reasons, believing that the present compensation of \$1,500, a year for each legislator, while not large, is still sufficient to indemnify the average Senator or member for his time rendered and expense incurred in the public service, we present this minority report for the consideration of the Convention.

July 14, 1915.

(Signed)

EDGAR T. BRACKETT,  
LEMUEL E. QUIGG,  
THOMAS A. KIRBY,  
LEWIS H. FORD.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 21

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RULES OF THE CONVENTION REVISED TO JULY 15, 1915

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#### CHAPTER I

##### Powers and Duties of the President and Vice-Presidents

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both vice-presidents, but

for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of the committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

The President and Vice-Presidents shall be consulting members, without vote, in the several committees to which they shall not have been specifically appointed.

## CHAPTER II

### Order of Business

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts, in numerical order.

5. Reports of standing committees in the order stated in Rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from the Committee on Revision and Engrossment may be received under any order of business.

## CHAPTER III

### Rights and Duties of Members

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in

answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman. A report by a minority of any committee shall be signed by the members rendering the same.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any member may explain his vote, for not exceeding three minutes; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

## CHAPTER IV

### Order and Decorum

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V

### Order of Debate

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call him to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI

### Committees and Their Duties

Rule 15. The President shall appoint the following standing committees to report upon the subjects named and such others as may be referred to them, viz.:

1. On the bill of rights, to consist of eleven members.
2. On the Legislature, its organization, and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers, limitations and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On public utilities, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military affairs, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests and relations, except those already referred, to consist of seventeen members.

20. On the conservation of the natural resources of the State, to consist of seventeen members.

.21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.

26. Contingent expenses, to consist of seven members.

27. Rules, to consist of seven members, and the President.

28. On the civil service, to consist of seventeen members.

29. On library and information.

30. On taxation, to consist of seventeen members.

Rule 16. The several committees shall consider and report, without unnecessary delay, upon the respective matters referred to them by the Convention. No favorable or adverse report by any committee, upon a proposed constitutional amendment, shall be made except by a majority of all the members of the committee. A minority of a committee may express its views in a report.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the constitutional amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all constitutional amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the money appropriated by law.

## CHAPTER VII

### General Orders and Special Orders

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order, whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII

### Committee of the Whole

Rule 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or



by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken, nor a limit be made as to the number of times of speaking.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed Constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed Constitutional amendment, the same shall be reported complete with any amendments made in the committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again.

## CHAPTER IX

### Proposed Amendments to the Constitution

Rule 30. No proposition for Constitutional amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for constitutional amendment by districts, in numerical order.

2. By report of a committee.

Rule 31. The title of each proposition for Constitutional amendment introduced shall state concisely its subject-matter. Matter which it is proposed to strike out shall be in brackets, and new matter shall be underscored and when printed shall be in italics. All proposed amendments shall be presented in duplicate.

Rule 32. All propositions for Constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed Constitutional amendments reported favorably shall be committed to the Committee of the Whole and immediately printed unless a different order be made not inconsistent with Rule 34. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for Constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All Constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed Constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee on their report is put.

Rule 34. No proposed Constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed Constitutional amendment shall be put upon third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed Constitutional amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed Constitutional amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which

the proposed Constitutional amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed Constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed Constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed Constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed Constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed Constitutional amendment, after the reading of the title, and before the reading of the text, the proposed Constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed Constitutional amendment, no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed Constitutional amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed Constitutional amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed Constitutional amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed Constitutional amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X

## Motions and Their Precedence

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions to, or for:

- |   |   |                                       |
|---|---|---------------------------------------|
| 1. Adjourn for the day.                                 | } | Not amendable or debatable.           |
| 2. Recess.  |   |                                       |
| 3. Call of the Convention.                              |   |                                       |
| 4. Previous question.                                   |   |                                       |
| 5. Lay on the table.                                    |   |                                       |
| 6. Postpone indefinitely, not amendable, but debatable. |   |                                       |
| 7. Postpone to a certain day.                           | } | Preclude debates on<br>main question. |
| 8. Go into Committee of the Whole.                      |   |                                       |
| 9. Commit to Committee of the Whole.                    |   |                                       |
| 10. Commit to a standing committee.                     |   |                                       |
| 11. Commit to a select committee.                       |   |                                       |
| 12. Amend.  |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions 1 to 11, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed Constitutional amendment, which shall be privileged to any member. Such motion may be made under any

order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI

### Of Resolutions

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business:

1. Except as provided in Rule 56, all resolutions giving rise to debate, whether reported by a committee or otherwise introduced, unless they relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three legislative days.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the

standing Committee on Contingent Expenses, for their report thereon before final action by the Convention.

## CHAPTER XII

### The Previous Question

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII

### The Convention Chamber and Privileges of Admission to the Floor

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. Members of former Constitutional Conventions.
4. The members of the Senate and Assembly and ex-Speakers.
5. The State officers, deputies and commissioners.
6. The Regents of the University.
7. United States Senators and Congressmen.
8. The Capitol Commissioners.
9. Persons in the exercise of an official duty directly connected with the business of the Convention.
10. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV

### General Rules

Rule 55. Equivalent motions, resolutions or amendments thereto, shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and, if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases be made upon one day's notice which shall state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a Constitutional amendment or other subject, the

Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once, nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during the sessions the members present shall take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after



the voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and any member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties, he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employees shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole and shall, at each day's session of the Convention, furnish a copy of the debates of the day before, written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Con-

vention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV

### Miscellaneous Provisions

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of the committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed as of course and without any special order 1,500 copies of the journal, 500 copies of the calendar, 2,500 copies of each proposed constitutional amendment, and 3,500 copies of each report and minority report of a committee on the subject of constitutional revision or amendment in which are set forth the reasons for their recommendation, to be printed as documents; 500 copies of each other document; and 3,500 copies of the record of the proceedings of the convention.

Rule 71. The printed copies provided for in Rule 70 shall be disposed of as follows:

There shall be reserved for binding 1,200 copies of the journal, 1,200 copies of the reports, 1,200 copies of the record of the proceedings.

The copies so reserved for binding shall be folded, collated and held by the printer until the close of the Convention, when they shall be bound as directed by the President or the Convention, and distributed as follows:

To each member of the Convention, two copies.

To the State Library, five copies.

To the Legislative Library, five copies.

To the office of each county clerk, one copy.

To each public library of the State, one copy.

To each bar association of the State, one copy.

To each college and university of the State, one copy, and the remaining copies shall be distributed as designated by the President or the Convention.

The printed copies provided for in Rule 70 and not reserved for binding shall be disposed of as follows:

One copy of each shall be placed upon the file of each member of the Convention, and one additional copy shall be delivered or mailed to each member as he shall direct.

Two copies of each shall be placed in the Legislative Library for use of members of the Convention.

One hundred copies shall be reserved for the use of the officers of the Convention, the State Library, the Department of Education, the Legislative Index Publishing Company, and the document room reserve.

Copies of the proposed constitutional amendments, of the reports and of the record shall be mailed daily to daily newspapers and weekly to all other newspapers and to each public library of the State, each bar association of the State, each law school of the State, each college and university of the state, and to such other institutions, newspapers and individuals as shall apply therefor and can be supplied from the number printed not necessary for the current work of the Convention.

Two copies of proposed constitutional amendments and two copies of reports for each member of the committees having duty in relation thereto shall be delivered to the clerks of such committees.

The balance of printed copies provided for and not reserved for binding shall be distributed in the order of application therefor by the members of the Convention.

Rule 72. The assistant sergeant-at-arms and doorkeeper shall be under the supervision of the Sergeant-at-Arms, who shall require their attendance and the performance of their duties. The committee clerks and stenographers shall be under the supervision of the chairmen of the several committees to which they are respectively assigned, who shall require their attendance and the performance of their duties. The general stenographers and all assistants to the stenographer shall be under the supervision of the stenographer of the Convention, who shall require their attendance and the performance of their duties. With the exception of the Secretary and assistant secretaries, the President's clerk and stenographer, the Secretary's stenographer and the secretaries to the Vice-Presidents, all other officers, assistants and employees of the Convention receiving compensation shall be under the supervision of an assistant secretary who shall be designated by the Secretary for that purpose and who shall require the attendance and performance of duty by such officers, assistants and employees.

To enable the President and Secretary of the Convention to sign the necessary vouchers for payment, pursuant to chapter 76 of the Laws of 1915, the several supervising authorities hereinbefore mentioned shall severally certify from time to time to the President and Secretary as to the attendance and performance of duty by the officers, assistants and employees respectively under their supervision.

Rule 73. After the eleventh day of June, nineteen hundred and fifteen, the call for proposed constitutional amendments by districts under Rule 3, shall be discontinued and no proposed constitutional amendment shall be introduced except on the report or recommendation of a standing or select committee.

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# IN CONVENTION

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## DOCUMENT

No. 22

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### REPORT OF THE COMMITTEE ON LEGISLATIVE POWERS, RELATIVE TO PROPOSED AMENDMENT No. 751 (INT. 573)

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JULY 21, 1915

In advocating the adoption of the bill introduced by Mr. Dunmore, Int. No. 573, the Committee on Legislative Powers and Limitations desires to file with the Convention the following memorandum:

This bill proposes to write into the basic law of the State the principle of reasonableness in legislation in the exercise of the police power which is a part of the unwritten constitutional law of this state.

In the case of the People vs. Ringe, 197 N. Y., the Court of Appeals held unanimously as follows:

“Power and authority exist \* \* \* in the Legislature to license and regulate certain vocations, notwithstanding the provisions of the Federal and State Constitutions, but such power and authority are dependent upon a reasonable necessity for its exercise to protect health, morals, or the general welfare of the State.”

This principle was fully discussed in the prevailing and dissenting opinion of the Supreme Court of the United States in the

Slaughter House Cases as early as 1872, and although the court divided in respect to monopoly and special privilege, there was general agreement to the effect that the States have reserve power to enact police laws in all cases where it is necessary to protect the general interests of the community.

Inasmuch as citizens generally have failed to understand the distinction between the written and the actual construction and application of the Constitution and the recognition by the courts of this power of the State, it has seemed to this committee that it is of great importance in so fundamental a matter that the written Constitution should clearly express the precise status of the law and leave no question for discussion or misunderstanding as to the power of the limitations of the Legislature or of the courts.

The provision to the effect that the Legislature shall not pass a bill under the police power, etc., unless there is reasonable necessity for the exercise of such power to protect the general interest of the community which is the phraseology of the Federal courts, or to protect the health, morals, or the general welfare of the State, which is the phraseology of the State courts, will clarify the entire situation, remove all doubts and will be of particular benefit to the community in all important respects.

On the one hand it will relieve the Legislature of the charge of attempting to do that which it has not the power to do, and on the other hand will relieve the courts from the charge of attempting to deprive the Legislature of power.

This adopts into the written Constitution the principle of the "rule of reason", which has prevailed in the Federal courts from early times and which was accentuated a short time ago under the decisions of the Standard Oil and Tobacco cases.

The same rule of reason in the construction, application and determination of the validity of a statute has long prevailed in this State and is formally written into the law in the Public Utilities Act of 1907, in which by Section 49, it was held that the orders of the Public Service Commission should be just and reasonable, thus subjecting their review on the ground of justice and reasonableness. This was also embodied in the State Labor Law of 1909 and was recognized and repeated with greater emphasis in the amendment contained in the Industrial Law of 1915.



# IN CONVENTION

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## DOCUMENT

No. 23

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REPORT OF THE COMMITTEE ON STATE FINANCES  
AND EXPENDITURES ON THE SEVERAL PROPOSED  
AMENDMENTS IN RELATION TO DEBTS CON-  
TRACTED BY THE STATE

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JULY 24, 1915.

Mr. Stimson, for the Committee on the State Finances, Revenues and Expenditures, submits the following memorandum:

Your Committee has considered the present situation of the debts of the State of New York, the sinking funds created for such debts and the provisions of Article Seventh of the Constitution and of the statutes governing and relating to such debts. It has also given consideration to the various proposed amendments relating to this article which have been referred to it by the Convention. As a result of such investigation, it reports to the Convention a Proposed Amendment embracing its recommendations in respect to Article Seventh of the Constitution.

THE INCREASE OF INDEBTEDNESS IN NEW YORK ON THE PART  
OF THE STATE AND ITS SUBDIVISIONS

Your Committee finds that the net debt of New York State over and above all sinking funds has increased from \$7,400,000 in the

year 1903 to over \$145,500,000 at the present time. The gross debt outstanding today is over \$186,000,000. The total authorized debt today is over \$231,000,000. During this period the population has only increased from 7,650,000 in 1903 to 9,899,000 in 1914. The per capita net State debt has thus arisen from \$0.94 per capita in 1903 to approximately \$15.04 at present. New York has at present not merely the largest total debt, but by far the largest per capita direct debt of any of the United States. It is much larger than those of the large states which are its neighbors. Pennsylvania has practically no debt, its sinking fund accumulations exceeding its indebtedness. In Illinois, the per capita debt is but \$0.39; in New Jersey, \$0.24; in Indiana, \$0.49; in Michigan, \$2.41, the foregoing figures being for 1913.

Correspondingly there has been recently shown in New York a tendency on the part of the political subdivisions of the State to greatly increase their indebtedness. The United States Census Bureau Bulletin of 1915 on "County and Municipal Indebtedness" makes the following statement.

"The civil divisions of the State of New York reported a total indebtedness far in excess of that reported by any other State. The total indebtedness, less sinking fund assets was \$1,046,226,813, which amount was equal to 30.1 per cent. of the indebtedness of all civil divisions in the United States and more than four times the amount reported by Pennsylvania which ranks second in total debt."

The per capita figures for municipal and county indebtedness also show preeminence on the part of New York. Its per capita county and municipal debt is \$107.71. The next highest per capita debt of the various states is \$70.21 for the State of Washington; \$61.66 for New Jersey; \$57.86 for Oregon; \$52.86 for Massachusetts; \$51.18 for California and \$47.23 for Ohio.

In eleven years, 1902 to 1913, the per capita debt of this class in New York has grown from \$56.56 to \$107.71, an increase of 90.4 per cent. Your Committee finds that while the credit of the State is still very high, this great increase in its indebtedness has been noticed and commented on in the investment market and that there is an increasing tendency on the part of investors to scruti-

nize our securities and to demand an improvement in our financial methods of incurring and securing debt.

#### SHORTCOMINGS OF THE PRESENT METHODS

With the general policy of the provisions of Article Seventh, your Committee is in hearty accord. These provisions were adopted in 1846 to remedy conditions resulting from extravagance in the construction of public improvements and the creation of debt for that purpose which had produced a crisis in the financial affairs of the State. In brief, the provisions of Article Seventh forbid the contraction of debts (excepting certain emergency debts provided for in Sections 2 and 3), unless the law authorizing the debt has been submitted to the people for ratification at an election where only one such law may be voted for at a time and unless it also provides for the payment of the principal of the debt within a fixed time by a direct annual tax, the proceeds of which are to create a sinking fund for that purpose.

Your Committee believes that these restrictions upon debts, requiring the authority of the people before their creation, and permitting only one proposal to be submitted at a time, have exerted a conservative influence upon State policy which until recently was successful in keeping down the State debt.

Until recently it was the settled policy of the State to make its capital improvements out of current revenues without incurring debt for the purpose. Our hospitals, our charitable and penal institutions and other permanent improvements have been built out of annual appropriations and until the recent decision of the people to incur large indebtedness for canal and highway improvements the State debt was very small. Your Committee believes that this is a sound and proper policy for a commonwealth and believes that this Convention should proceed with extreme caution in removing these restrictions.

Nevertheless, there have developed certain serious shortcomings in the system which should be remedied. The attempt to limit the method of taxation to direct taxation has not been satisfactory and has been already modified by the amendment of 1906 contained in Section 11 of the Article. The State government has not been successful in its methods of calculating and collecting the contributions

for the sinking funds. As a result in some years a very much larger amount has been contributed than would be necessary under scientific amortization. In other years, evidently in reliance upon such excessive contributions in the past, no contributions whatever have been made to some of the funds. There has thus resulted on the one hand an unnecessary and oppressive taxation of the present generation while, on the other, there has been no certain or automatic method provided for the enforcement of sinking fund contributions. The unnecessary burden which has been put upon present taxpayers can be readily seen when it is stated that up to September 30, 1914, there had been contributed to all of the sinking funds \$34,487,679.41, where only \$4,940,095.13 was required under a 3 per cent. actuarial computation, making a surplus at that date accrued of \$29,547,584.28.

#### SERIAL BONDS INSTEAD OF SINKING FUND BONDS

Your Committee recommends that hereafter all debts except emergency debts shall be based upon serial bonds payable in equal instalments. The advantages of such a system are so fundamental and are so closely related to sound governmental policy, as well as to sound finance, that we believe such a restriction to be thoroughly worthy of a place in the Constitution. The most certain, simple and cheap way to amortize a debt is to pay it off in annual instalments. The uncertainties of calculation which have so unfortunately affected our sinking funds in the past are at once eliminated. There is no large fund left in the hands of public officials to be eared for and invested and reinvested for fifty years with all the attendant risk and temptation, and the danger that this power of investment in various local securities may be perverted into a political power is entirely removed. Furthermore, the fact that the same administration which incurs a debt must at once begin, within one year, to make provision for its retirement necessarily and strongly tends towards responsibility and prudence in the contraction of debt. Finally, the serial method produces an immense saving in the amounts which the State must eventually pay to retire its debt. If our present canal debt of \$118,000,000 had been composed of serial bonds finally maturing in fifty years

instead of the present straight term sinking fund fifty year bonds, the State government would have saved \$46,677,596.13 according to the calculation of the Comptroller's office, in the total cost of retiring the debt, even if we assume that the sinking fund was able to earn continually 4 per cent. on its investments.

These considerations, in the opinion of your Committee, would be decisive in favor of serial bonds for the future even if such bonds were less marketable than straight term sinking fund bonds. The administrative benefits and actual cash saving of the serial method would, in the end, far outweigh even a decided loss in initial marketability. After careful investigation, however, your Committee is of the opinion that serial bonds are quite as marketable as sinking fund bonds. At a recent sale by the Finance Department of New York city, where a sale of serial bonds was made side by side with sinking fund bonds, the former brought, when reduced to terms of equivalent maturity, a better price than the latter, the Comptroller of the city attributing the success of the sale to the serial bonds. Inquiry among the large financial houses of New York, Boston, Chicago and Philadelphia has developed the practically unanimous opinion of those authorities that serial bonds are at least as marketable as sinking fund bonds. The system has already been adopted by other States of the Union and is also now in use by many of the cities and smaller subdivisions of this State.

#### THE LIFE OF THE BONDS SHALL NOT EXCEED THE LIFE OF THE IMPROVEMENT FOR WHICH THEY WERE ISSUED

The amendment which your Committee submits also provides that hereafter no debt shall be contracted which shall run for a period longer than the probable life of the work or object for which the debt is to be contracted, to be determined by the Legislature under general laws. One of the most serious criticisms which your Committee finds has been made against the financial methods of the State in the past has been its failure to limit the life of the obligations it has incurred to the life of the benefits which it expected to receive from the issue of these obligations. Thus, for example, the State has authorized the issue of \$100,000,000

of fifty-year bonds for the improvement of our highways and between sixty and seventy millions of this debt have already been contracted. Of this amount your Committee finds that the proceeds of approximately 30 per cent. have been spent for constructing the surface of highways, the life of which surface cannot ordinarily exceed four or five years and often is much less. This means that generations of taxpayers in this State will be paying heavy interest and sinking fund charges for improvements from which they will receive not an atom of benefit. Road surface which has been purchased with some thirty millions of these bonds will have to be replaced perhaps ten times before the date when these bonds will become due. Your Committee finds that this improvidence of method has brought down upon it serious condemnation on the part of all dealers in our securities and that it is pointed out as one of the most serious evils now existing in our methods.

After carefully considering various suggested methods for reform your Committee has reached the conclusion that the most practical method is that now in force in the State of Massachusetts where the Legislature provides by general laws the length of term for which bonds may be issued in respect to various classes of improvements, making the length of such term correspond with the anticipated life of the improvement. Under the terms of the amendment submitted herewith no further debt can be authorized until such statutes have been passed by the Legislature in conformity to the policy thus laid down in the Constitution. At the same time, in order that bonds issued upon the faith of such statutes may not be invalidated by evidence indicating that the Legislature was mistaken in its estimate of probable life, the determination of the Legislature embodied in the statute is made conclusive.

Even with this proposed remedy in force for the future your Committee recognizes the seriousness of the situation which has been created by the absence of such precaution in the past, particularly in regard to the highway debt. A very serious and unjust burden has been in this way placed upon future taxpayers of the State. This has been one of the considerations which have determined your Committee to recommend that the present exces-

sive accumulations in some of the sinking funds should not be depleted for the purpose of modifying present taxation. The unnecessary burden thus cast upon present taxpayers by these existing accumulations in the sinking funds will barely offset the unnecessary and unfair burden which has been thrown upon future taxpayers by the highway debt. The present taxpayers have been compelled to pay about \$30,000,000 unnecessarily into the sinking funds. Future taxpayers will be compelled to pay about \$30,000,000 for the surface of highways from which they will have no benefit. The burden of one generation will roughly balance the burden of the other.

#### TREATMENT OF THE PRESENT SINKING FUNDS

Your Committee has endeavored in its treatment of this difficult subject to keep constantly in mind both the credit of the State and the rights of the bondholders on the one side, and the necessity of relief for the taxpayers from unnecessary taxation on the other. Although there is at present in nearly all of the funds an accumulation which is wholly unnecessary to a scientific amortization of the debt, your Committee feels that it would be very unwise and improper to take out of those funds any of those accumulations. The amounts of these funds have been publicly advertised and reported by the Comptroller; purchasers of State bonds have undoubtedly known of and relied on this information; and to diminish the funds—whether or not it were a violation of contract—would undoubtedly seriously affect the State's credit and reputation for good faith.

Nevertheless, your Committee has felt that it was highly important that a correct and automatic method of accumulation should be provided for these funds in the future. Such a method, we believe, is provided in the amendment herewith submitted. Each year the Comptroller must appraise the value of the securities in each fund and calculate afresh the amount of the contribution which will be annually required to amortize the debt at its maturity, estimating the income on the securities at the conservative rate of 3 per cent. Thereupon it is made the duty of the Legislature to appropriate the amount thus estimated as the contribution to the fund for that year. If the Legislature fails

to make this appropriation, the duty is imposed upon the Comptroller, as the chief fiscal officer of the State, to take the amount in question from the next general revenues of the State in his hands and apply it to the funds in question. The method of taxation to be employed is thus left to the discretion of the Legislature but if that body fails to act, what is essentially a lien, superior to the current requirements of the State government, is put upon its general revenues in favor of the bondholder.

The same method of enforcement is also made applicable to the payment of the instalments of principal and the interest on all future debts of the State. Your Committee feels that in this way the completion of the sinking fund for the old debt and the faithful payment of the recurring instalments of the new debt is made as simple and automatic as possible. In order to give to the persons most interested in the enforcement of the debt a right to put in motion the machinery for its collection, an express right to mandamus against the Comptroller is given to the bondholder. This remedy is placed in the Constitution because, under existing law, it would otherwise be doubtful whether such a writ would lie against a State officer.

Three of the existing sinking funds are so near completion that no further contributions to them are required. The regular accumulations upon the amounts already contributed are much more than enough to amortize the principal of the debt by the time of its maturity and leave in addition a large annual income unnecessary for that purpose. Your Committee recommends that this excess income be applied to the interest on the debt. Your Committee believes that such application is within the original contract with the bondholders contemplated by the terms of the present Constitution, and that, so far as those funds are concerned, the good faith of the State will be literally maintained and at the same time a certain measure of relief will be afforded to the present taxpayers.

#### AUTHORIZATION TO REFUND THE OUTSTANDING SINKING FUND DEBT WITH SERIAL BONDS

Your Committee feels that its recommendations would be incomplete unless authority were granted to replace the present straight



term fifty-year debt with serial bonds. It would be of little avail to provide a new and better system for the future and at the same time to leave the State for over forty years without authority to free itself from the burdens and inconveniences of the system about to be abandoned by exchanging the old form of debt into the new. Of course, such exchange can only be accomplished by the consent of the outstanding bondholders. Your Committee finds, however, that even if it were necessary to offer a slightly higher rate of interest on the new securities as an inducement for turning in the old, the resulting saving in expense to the State would be very large. It has been calculated by the State Comptroller's office that if the existing canal debt of one hundred and eighteen millions were refunded into serial bonds bearing a rate of interest of  $4\frac{3}{4}$  per cent. as against the present average rate of less than  $4\frac{1}{2}$  per cent., the consequent saving to the State would be no less than \$34,120,091.91.

Accordingly, in its submitted amendment, your Committee has proposed that authority be given to the Legislature to provide for the exchange of the outstanding sinking fund bonds into serial bonds of the same final maturity upon such terms and conditions as the Legislature may authorize subject only to the restrictions that the new debt shall mature no later than the old and that the total cost of debt in its new form shall not be larger than the cost to the State of the existing debt.

#### DEBTS CREATED IN ANTICIPATION OF REVENUES.

Whatever express authority is granted by the present Constitution to the State government to borrow for the purpose of meeting casual deficits in current revenues or in anticipation of the receipt of taxes is contained in section 2 of article seventh. The form of this article is, in the opinion of your Committee, imperfect, first, in that it limits such borrowing power to a million dollars, and, second, that it does not strictly confine it to the foregoing purposes. Your Committee finds that in 1912, the State issued \$990,000 bonds under this provision for the purpose of acquiring the Saratoga reservation, thereby practically exhausting all of its emergency borrowing power in the creation of a debt for a permanent improvement.

During the past year, owing to the exhaustion of its surplus and the exigencies created by the European War, the State found itself obliged to borrow moneys for the current expenditures of the government in anticipation of the collection of its taxes. Owing to the fact that the amount named in section 2 was thus exhausted it was obliged to fall back upon its implied power to contract such an indebtedness. Your Committee finds that considerable embarrassment was caused thereby and that, although the Appellate Division of the Third Department has sustained the State's contention that it had such an implied power considerable difficulty was found in the negotiations of its securities for that purpose.

Your Committee thinks that this situation should be put beyond doubt, and has, therefore, recommended an amendment of section 2 which limits the debts to be contracted thereunder to debts for the purposes and within the amounts of appropriations already made, the additional limitation being imposed that the bonds or other obligations issued for this purpose shall be payable and paid within one year from the date of issue.

#### HIGHWAY DEBT.

In November, 1905, the Constitution was amended by the insertion of section 12 of Article VII, which authorized the creation of a debt for the improvement of highways and provided that the aggregate of the debt authorized by this section should not, at any one time, exceed the sum of \$50,000,000. It also provided that none of the provisions of section 4 of this article should apply to the debts for the improvement of highways thus authorized by section 12. Seven years later, in 1912, an additional \$50,000,000 of bonds were authorized by referendum under section 4 of Article VII. These \$100,000,000 of bonds for highway improvement have thus been authorized under two different sections of the Constitution, one of them providing for a referendum to the people and the other authorizing the issue of bonds without further authority from the people than that conferred by the enactment of section 12. Under section 12 it would also seem evident that the original debt of \$50,000,000,

as fast as it is retired, may be replaced by new issues of bonds under the authority of the Legislature alone, provided only that the aggregate outstanding at any one time shall not exceed \$50,000,000.

Your Committee sees no reason for this divergence of methods and of authority in the creation of highway debts. It believes that all future debts created for highway construction should require the sanction of the people of the State expressed at a referendum under the formalities and restrictions of section 4.

The proposed amendment which it submits, therefore, carries out this recommendation and repeals the authority contained in section 12 for the creation of any further highway debts other than under the provisions of section 4.

#### RATIFICATION OF EXISTING DEBTS.

Fully realizing the importance that there should be no possible misunderstanding in the creation of a new Constitution as to the intention and readiness of the State to stand behind its existing debts with the utmost good faith, your Committee has inserted in the proposed amendment an express assurance to that effect.

Your Committee desires to express its appreciation of the assistance it has derived from the proposed amendments submitted by Messrs. Parsons, Wagner, Blauvelt, A. E. Smith, Austin, R. B. Smith, Lincoln, Cullinan, Van Ness and E. N. Smith. These amendments have been carefully considered and many of the proposals embodied in the amendment submitted herewith by your Committee have been suggested in one or the other of the proposals submitted by these gentlemen.

Respectfully submitted for the Committee.

HENRY L. STIMSON,

*Chairman.*

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#### MINORITY REPORT

Mr. Wagner presented the following minority report:

I disagree with the report of the Committee on Finance so far as it relates to the disposition of the excess in our sinking funds for the following reasons:

1. It fails to carry out the indisputable intent of the people when they voted the canal and highway referendums, namely to

distribute equitably the payment of the debt over a period of fifty years.

2. The proposed amendment requires the future appropriation from the general fund of money to pay the interest on existing debts, notwithstanding the fact that more than \$25,000,000 has already been taken improperly from the general fund for this purpose. No further demands ought to be made upon the general fund for sinking fund purposes until this large amount improperly taken in excess of the legal requirement has been used for the purpose for which the sinking funds were created under the provisions of the Constitution.

3. Its adoption would compel the levy next year of an unjust direct tax of \$11,000,000 which ought not to be levied, since it is conceded by everyone familiar with our sinking funds that the excess in the different funds can be used for the payment of the interest upon the bonds without in any way affecting the security of the investment or in any way violating the provisions of the Constitution. Indeed, the excess has been collected unjustly from the present taxpayer and we ought as near as possible cure this injustice by giving the present taxpayer the benefit of this excess.

4. For the reason that while the report favors the serial bond method for future State debts, the proposal for the amortization of the present funded debt does not include or adopt the principle upon which the serial bond system is based.

Briefly, the history of the principal sinking funds is as follows: The first issue of bonds for the barge canal consisted of \$2,000,000 3 per cent 18-year bonds. By an adjustment made in 1914, the sinking fund now equals the principal and its earnings meet the interest charges from year to year. The next sinking fund for barge canal bonds was created to provide for the payment of \$21,000,000 of 3 per cent 50-year bonds authorized by an amendment to the Constitution in 1905. Instead of raising a tax as provided by the Constitution to provide a sinking fund for the bonds issued under this authority, the Legislature levied a tax rate of .481 of a mill upon the entire valuation of the State upon the theory that a sinking fund should be created for the entire authorized issue of \$99,000,000 whether the bonds had been actu-

ally issued or not. The result was the creation of an unnecessary and illegal excess in this sinking fund of over \$16,000,000. In other words, the Legislature provided a sinking fund in the years 1906, 1907, 1908 and 1909 for the bonds which had been issued and for the bonds which have been issued since, and there ought not to be any question about using this excess for the purpose for which it was raised, that is, the contribution to the sinking fund for those bonds which were subsequently issued.

The next sinking fund is to provide for the retirement of \$40,000,000 4 per cent 50-year bonds issued under the authority of another amendment to the Constitution, which permitted the Legislature to increase the rate of interest. When the Legislature provided a tax rate for these bonds, it reduced it from .481 of a mill to .4 of a mill although the rate of interest had been increased, thus disclosing and confessing the error which had been made in 1906. This sinking fund also contains an excess due to the fact that after the tax rate was fixed, the assessed valuation of the State was greatly increased and the consequent contribution to the sinking fund was much larger than was necessary and also to the fact that the earnings of the sinking fund were much larger than were contemplated when the tax rate was fixed.

The other barge canal sinking fund provides for the retirement of 50-year 4½ per cent bonds and this sinking fund has a large excess due to the payment into it of large amounts received for premiums and accrued interest. All the canal sinking funds have received premiums and accrued interest which are not necessary to meet the requirement in the Constitution and which are entirely unnecessary for the amortization of the bonds.

The excess in the highway sinking funds is due to the fact that the Constitution provided for the setting aside of a proportionate part of the debt each year but failed to make use of the earnings of such sinking funds with the result that the earnings of the funds have been placed in the highway sinking funds and created excesses to that amount.

The highway sinking funds have also been unduly enlarged by the payment into them of the premiums received on the sale of

bonds. What is true of the barge canal sinking funds is also true of the barge canal terminal sinking funds, of the Cayuga and Seneca sinking funds and the Palisades Park sinking funds so that the unnecessary amount in the several funds as stated by the Comptroller in his report to this Convention is as follows:

The surplus or excess of available resources over the reserves calculated in accordance with the method stated in the balance sheet, Exhibit A, as of April 30, 1915, was \$28,904,706.05, classified as follows:

Canal Debt sinking funds.....	\$20,671,850	68
Highway Debt sinking funds.....	8,136,684	81
Palisades Interstate Park Debt sinking funds..	96,170	56
Total. ....	\$28,904,706	05

The report of the Finance Committee accompanying their proposal condemns the creation of this large excess in the several sinking funds and admits that it was placed there improperly and through an error in judgment and not through any requirement of the Constitution. Nevertheless, their proposal does not permit the use of any of this excess for the purpose for which it was created, and the Committee gives as its reasons for not relieving the taxpayer by the use of these funds in excess of the requirement that the purchasers of the bonds knew of the existence of these abnormal sinking funds and that it would therefore be a violation of good faith on the part of the State to use them and consequently would impair the credit of the State. The contention of the Committee in this regard is not convincing because the purchasers of the bonds also knew what the constitutional provisions for sinking funds were and purchased the bonds with that knowledge. So far as impairing the credit of the State is concerned, for two years in three different sinking funds the State has, through the Legislature, made use of a portion of this excess and there has been no impairment of the credit of the State because the sale of bonds subsequent to this action of the Legislature produced the greatest premium that the State ever received and furthermore since this action of the Legislature, the value of the State bonds involved has increased and not decreased.

The Committee also leaves open the question of the legality of using any part of the sinking fund. Without attempting to discuss that question, the fact that the Committee itself proposes in the future to use a part of the excess destroys the force of that contention. The other reason for not using any part of the excess in the sinking funds, which is set forth by the Committee, is that the highway bonds are fifty-year bonds while the highway improvement will last only a few years, and the Committee contends that for that reason future taxpayers will be burdened with a tax for which they received no benefit equal to the tax which the present taxpayers have been obliged to pay by the creation of the excess in the sinking funds. This contention of the Committee is made on the assumption that the highway improvements last for four or five years in some cases and then are lost to the State. The fact is that poor judgment on the part of the Highway Department caused the construction of a considerable number of State roads which could not endure for more than six or seven years. They have also constructed many roads which ought to endure during the life of the bond, but in the case where the improvement is short-lived the present taxpayer has to provide out of the general funds of the State each year money to place these roads which will be used by the future taxpayer with the same enjoyment and benefit as if they were originally constructed in permanent form, the future taxpayer will only pay his portion of the debt.

It will be noticed by examining the Comptroller's report to this Convention, which is Document No. 18, that there is now in the sinking funds a total of \$40,568,351.32 available, according to the report, for both interest and principal of the debt; that of this sum of \$40,568,351.32 there is an excess over the reserve required of \$28,904,706.05. It is my contention that this excess should be applied to the purpose for which the several sinking funds were created, namely, the payment of principal and interest. In that way we can avoid next year a direct tax of over \$11,000,000. I particularly urge this action at this time, not only because it is just to the present taxpayer who has paid

this excess, and the use of the excess will not in any way affect the integrity of the sinking fund or the security of the bondholder, but particularly because it will lift a burden from the shoulders of the taxpayers of New York city which they can hardly bear in view of the tremendous budget, for local purposes, of the city of New York.

For the reasons as stated, I disagree with the report of the Committee in that it did not make this additional requirement of using the excess for the payment of interest now, but so far as their other recommendations are concerned I heartily concur in their views.

ROBERT WAGNER.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 24

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REPORT OF THE COMMITTEE ON INDUSTRIAL INTERESTS AND RELATIONS RELATIVE TO PROPOSED AMENDMENTS, No. 195 (Int. 194); No. 196 (Int. 195), AND No. 419 (Int. 407)

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JULY 26, 1915

Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Amendment introduced by Mr. A. E. Smith (No. 195, Int. No. 194), entitled "Proposed constitutional amendment to amend Article III of the Constitution by inserting a new section, in relation to delegation of legislative power in matters affecting employees," reported as follows:

The Committee on Industrial Interests and Relations recommends the passage of the said amendment with the following amendments:

Strike out in line 4 the words "in its discretion".

Strike out in lines 4 and 5 the words "duly constituted" and insert in lieu thereof the words "State board or".

Strike out in line 5 the words "board or administrative agency".

Strike out in line 6 the word "varying".

Strike out in line 7 the words "to existing conditions" and insert in lieu thereof the following "according to varying conditions."

Strike out in line 8 the words "comfort" and "general".

Strike out in line 9 the word "employees" and insert in lieu thereof the words "any class or classes of persons or the public generally".

which report was agreed to, and said proposition ordered reprinted as amended, and referred to the Committee of the Whole.

The object of this Proposed Amendment is to enable the Legislature to delegate some of its power.

The complexity of modern industrial conditions is such that it is impossible for the Legislature, in dealing with them to have in mind their great variety and to deal with each of them adequately and fairly. This results in laws which are unnecessarily harsh in their application to some conditions and which affect others which they were not intended to affect.

While the Legislature may now authorize the making of rules and regulations and in that way delegate some of its functions, it may only "delegate the power to determine some facts or state of things upon which a statute makes, or intends to make, its own action depend." 8 Cyc. of Law and Practice. p. 830; Ruling Case Laws, Sec. 179.

It cannot delegate powers which are "inherently and exclusively legislative." *Village of Saratoga Springs v. Saratoga Gas, Electric Light and Power Co.*, 191 N. Y. 123, at p. 133. The result of this is that rules and regulations cannot be formulated to deal with some situations as to which a board or commission can, as a practical matter, better determine what should be done than can the Legislature.

For instance, the Court of Appeals has held that it was a delegation of "inherently and exclusively legislative" power, and therefore unconstitutional, to insert in the one day of rest in seven law a provision exempting "employees, if the Commissioner of Labor in his discretion approves, engaged in the work of any industrial or manufacturing process necessarily continuous in which no employee is permitted to work more than eight hours in any calendar day", \* \* \* "because of the attempt which the Legislature has made to delegate its power to the Commissioner of Labor". *People v. Klinck Mfg. Co.*, 214 N. Y., at p. 138.

There is a law against smoking in factories. There are some factories, however, where there is no danger from smoking, and where it could reasonably be allowed. It has been found impracticable to draw a general statute which would leave it to the Commissioner to find facts so as to allow the exemption. In such cases a board or commission sitting throughout the year could give fuller hearings than can the Legislature, and could more fairly classify the exemptions which should be made.

The delegation of such power would make more effective the work of the State Industrial Commission, which was created, as had been the Industrial Board, to meet the needs of the industrial situation.

Both the representatives of employers and the representatives of employees who were heard before your committee approved such a delegation of power.

The power can only be delegated to a body consisting of more than one, inasmuch as the terms "board" and "commission" imply more than one person. *Wilson v. Bleloch*, 125 A. D. 191.

The phrase "rules and regulations" implies "uniformity, publicity and the establishment of standards \* \* \*". A rule must necessarily be of general application, and a regulation must apply impartially." *State Racing Commission v. Latonia Agricultural Association*, 123 S. W., 681, 685.

This limited delegation of power would not permit favoritism in individual cases, but would require rules for all similarly situated.

The words "supplementing", "modifying" and "adapting" are defined to mean the following:

*Supplementing.* Adding to anything to make it more full and complete. Filling up, or supplying by additions, making up deficiencies in.

*Modifying.* Qualifying; especially moderating or reducing in extent or degree; altering slightly or not very much; varying.

*Adapting.* Making suitable; making to correspond; suiting; fitting by altering, modifying or remodeling for a different purpose; making by altering or fitting something else; producing by changing of form or character.—(*Century Dictionary*.)

This amendemnt is a mere grant of power to the Legislature. The Legislature may impose such limitaitions upon its exercise by

those to whom it delegates the power as it sees fit, and would presumably reserve the right to annul at any time any action taken under such delegation of power.

HERBERT PARSONS,  
*Chairman,*  
*Committee on Industrial Interests and Relations.*

Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Amendment introduced by Mr. A. E. Smith (No. 196, Int. No. 195), and Proposed Amendment introduced by Mr. Parsons (No. 419, Int. No. 407), both of which relate to the power of the Legislature to prohibit manufacturing in dwellings, reported as follows:

The Committee on Industrial Interests and Relations recommends the passage of Proposed constitutional amendment (No. 419, Int. No. 407), entitled "Proposed constitutional amendment to amend Article III of the Constitution, in regard to the power of the Legislature to prohibit manufacturing in structures used for dwelling purposes," without amendment.

which report was agreed to, and said Proposed Amendment referred to the Committee of the Whole.

There is question whether the police power of the State as declared by the courts is extensive enough to prohibit manufacture in dwellings. This is due to the decision of the Court of Appeals, in *Matter of Jacobs*, 98 N. Y. 99, where an act which prohibited the manufacture of cigars in any part of any floor which was occupied for the purposes of living, sleeping, cooking or doing any household work in a tenement house was held unconstitutional and in which Judge Earl, writing the opinion of the court, said (at p. 113):

"To justify this law, it would not be sufficient that the \* \* \* manipulation (of tobacco) may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health. \* \* \* It cannot be perceived how the cigarmaker is to be improved in his health or in his morals by forcing him from his home with its hallowed associations and beneficent influences to ply his trade elsewhere \* \* \* What possible relation can cigar making in any buildings have to the health of the general public? \* \* \*

Earlier in the opinion the court had said of the cigarmaker (p. 104):

“ He may choose to do his work where he can have the supervision of his family and their help, \* \* \*. He may desire the advantage of cheap production in consequence of his cheap rent and family help, and of this he is deprived.”

Even if it be argued that later opinions of the court would justify such legislation, the power should not be left in doubt.

Some of the objections to permitting manufacture in dwellings are the following:

The public health is imperilled. Sanitary laws and regulations of manufacture cannot be enforced, nor can restrictions on the hours of labor of women and children be enforced or their night work prevented. Tenement manufacture is a breeder of tuberculosis. We spend vast sums of money to cure tuberculosis, a large amount of which is caused by manufacture in tenements which we do not prevent. To allow manufacture in dwellings operates unfairly to the enlightened manufacturer who prefers to have his employees work in sanitary surroundings. His competitor who has the work done in dwellings is relieved of the cost of rent, light and fuel and of maintaining sanitary conditions, and all other laws regulating factory buildings. Manufacture in dwellings is manufacture at very low compensation and depresses the general wage scale. It tends to aggravate irregularity of employment. The manufacturer endeavors to keep a supply of capable employees for his factory. This is unnecessary if he is contracting out his work to be performed in dwellings. One of the worst results of manufacture in dwellings is the use of the labor of children. Very young children can be and are employed. Their employment cannot be prevented because it would require an army of inspectors to prevent it. As soon as an inspector enters the ground floor of a tenement the children on the other floors can be dismissed from their work, and the inspector finds nothing. It also leads to lack of school attendance.

There is, of course, a great deal of work done in dwellings which is not at all objectionable. It will be for the Legislature to so legislate under the power which this amendment gives that such work will not be interfered with.

HERBERT PARSONS,

*Chairman,*

*Committee on Industrial Interests and Relations.*









# IN CONVENTION

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## DOCUMENT

No. 25

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**REPORT OF THE COMMITTEE ON PUBLIC UTILITIES  
RELATIVE TO PROPOSED AMENDMENTS, No. 715  
(Int. 98); No. 161 (Int. 161); No. 718 (Int. 249); No. 494  
(Int. 482); No. 655 (Int. 639); No. 708 (Int. 688)**

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JULY 28, 1915

Mr. Hale, from the Committee on Public Utilities, submitted the following report:

The Committee on Public Utilities to which were referred,

First: Proposed Amendment introduced by Mr. Foley (No. 715, Int. No. 98), entitled "Proposed constitutional amendment, to amend Article V of the Constitution, by adding a new section thereto in relation to public service commissions for the first and second districts;"

Second: Proposed Amendment introduced by Mr. Schurman (No. 161, Int. No. 161), entitled "Proposed constitutional amendment, to amend Article V of the Constitution by adding a new section thereto in relation to public service commissions;"

Third: Proposed Amendment introduced by Mr. Olcott (No. 718, Int. No. 249), entitled "Proposed constitutional amendment, to amend the Constitution by adding a new article creating public utilities commissions and prescribing their jurisdiction, powers and duties;"

Fourth: Proposed Amendment introduced by Mr. Coles (No. 494, Int. No. 482), entitled "Proposed constitutional amend-

ment, to amend Article V of the Constitution by adding a new section thereto in relation to public service commissions;”

Fifth: Proposed Amendment introduced by Mr. Hinman (No. 655, Int. No. 639), entitled “Proposed constitutional amendment, to amend the Constitution by adding a new article creating public service commissions and prescribing their jurisdiction, powers and duties;” and

Sixth: Proposed amendment introduced by Mr. Landreth (No. 708, Int. No. 688), entitled “Proposed constitutional amendment, to amend Article V of the Constitution in relation to the public service commission, its powers and duties;”

Reported by Proposed Amendment, entitled “Proposed constitutional amendment, to amend Article V of the Constitution by adding a new section thereto relating to public service commissions” (Int. No. 706), which was read twice, and said committee reports in favor of the passage of said proposed amendment, which report was agreed to and said proposition ordered printed and referred to the Committee of the Whole.

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#### MINORITY REPORT

Mr. Kirby presented the following minority report:

*To the Convention:*

The undersigned hereby dissents from the report of the Committee on Public Utilities, relative to the office of Public Service Commissioners, and gives the following reasons therefor:

First: That the continuation in office of the commissioners in the Second District at the present salary of \$15,000 each, and at a greater salary than judges of the Court of Appeals and justices of the Supreme Court, except in the first department, should not be tolerated.

Second: That the proposal of the committee does not prevent the Legislature from further raising the compensation of the commissioners.

Third: That the right to review, and the extent and manner thereof, of the decisions and orders of the commission should not be left to the Legislature but should be fixed by the Convention.

THOMAS A. KIRBY.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 26

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#### REPORT OF THE COMMITTEE ON RELATIONS TO THE INDIANS, RELATIVE TO PROPOSED AMENDMENT No. 769 (Int. 707)

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JULY 29, 1915

Mr. Lindsay, from the Committee on Relations to the Indians, to which have been referred several proposed amendments relating to abolishing of Indian courts and extending the laws of the State of New York to the Indians, reports by proposed constitutional amendment entitled "Proposed constitutional amendment to amend Section fifteen of Article I of the Constitution of the State of New York, in relation to Indians" (Int. No. 707), which was read twice and said committee reports in favor of the passage of the same, which report was agreed to, and said proposed amendment ordered printed and referred to the Committee of the Whole.

The following reasons, among others, are presented in support of said report:

Your Committee is convinced that the time has come when the Indians of the State of New York should be treated as civilized persons, and not as barbarians. The theory of the State and Federal Government for more than a century has been to treat them as dependents, in a state of tutelage, with the ultimate end in view of full citizenship. Although this policy has been pursued through four generations, our method of governing these people, our attitude toward them, and their knowledge of our laws remain practically as they were a half century ago.

During that period the American Negro, at the beginning of the period fully as incapable of self government as the Indian, has passed from slavery and dense ignorance to good citizenship and comparative intellectuality. Indeed, when the American Indian in this State was an intelligent, independent, and, in a measure, self governing individual, the American Negro was much lower in the scale of civilization, and was a slave. The reason for the progress of the Negro, and the stagnant condition of the Indian is not hard to find. One associated with the white man, was governed by his laws, later had the benefit of these laws conferred upon him, and was compelled to know and obey them; the other, treated as a child, left to his own devices and government, in doubt as to his allegiance and rights under our laws, has drifted along without an object and without hope as to his future. Ultimate citizenship has been the cry of presidents and governors in their recommendations, of commissioners of the Federal Government and of this State, for nearly a century; while the method of government of the Indians in New York during all that time has tended in exactly the opposite direction.

In 1888, the Legislature of this State appointed a commission, of which Mr. Whipple of this Committee was Chairman, to investigate and report on almost every phase of the State Indian problem. This Commission performed its duties with thoroughness, and made a report in January, 1889, covering in detail and with the greatest fullness and accuracy, all questions relating to the lands, moral and social condition, government and needs of the Indians, and collecting in the report the treaties, laws and contracts which relate thereto. This report, commonly known as the Whipple report, among other things, made the following recommendation:

(4) "The repeal of all existing laws relating to the Indians of the State, excepting those prohibiting the sale of liquors to them and intrusion upon their lands, the extension of the laws of the State over them, and their absorption into citizenship."

Practically nothing has been done by the Legislature in pursuance of such recommendation.

In 1905, the Legislature appointed another Committee to inquire and report upon the powers of the State to legislate for the

Indians, and what, if any, additional legislation was needed. This Committee, for which Mr. Ray B. Smith of this Convention was counsel, took evidence upon the various reservations and elsewhere, and in 1906 made its report. Both the Whipple Commission and this Committee strongly condemned the Indian courts, the law conferring upon the peacemakers of the Seneca Indians on the Allegheny and Cattaraugus reservations exclusive power over marriage and divorce, and the unsettled condition of the Indian with reference to our laws and the jurisdiction of our courts. Still nothing has been done.

Our present Indian laws are substantially as they were enacted from 1813 to 1849, except that the exclusive power over marriage and divorce was conferred on the peacemakers' courts of the Allegheny and Cattaraugus reservations by Chapter 374, Laws of 1859. Very few of these laws are of a general nature applying to all Indians within the State. The Indians on the Tonawanda, Allegheny and Cattaraugus reservations have peacemakers' courts; the two last named have Surrogates' Courts, and the Tonawandas have not; the peacemakers' courts of the Allegheny and Cattaraugus reservations have exclusive jurisdiction over marriage and divorce, and the Tonawandas have not. The Tuscaroras, Onondagas, St. Regis, and Shinnecocks have no courts of any kind. The power to contract is conferred upon all Indians, and then nullified in the same section by a provision forbidding any person to sue an Indian of the Tonawanda or Seneca nation or Onondaga tribe upon any contract under heavy penalties, leaving the St. Regis, Tuscarora, Oneida and Shinnecock Indians open to such suits. The statute extends the State laws as to marriage and divorce to all Indians, and in the same section excepts those on the Allegheny and Cattaraugus reservations. This report cannot be extended to indicate all these anomalies and contradictions in our present Indian law.

At the present time in the great State of New York, on the Allegheny and Cattaraugus reservations, two ignorant Indians, called peacemakers, may at the request of an Indian, release him from his wife, and set her adrift without provision or remedy, and without any trial, except an informal hearing. She may appeal to the Indian Council, but the evidence shows it seldom acts. She cannot have any relief under our laws or in our Courts.

It is a piece of patchwork, out of date, and its worst features enacted to suit the whims of certain classes of the Indians. The evidence taken by the various commissions, as well as communications from the better class of Indians who desire some relief from present conditions, show conclusively that the present conditions of the laws is fostering shiftlessness, immorality, and crime upon the reservations, and retarding the development of the Indian toward good citizenship.

No doubt the failure of the State to take some drastic action heretofore has been because of doubt as to how far the State could extend its laws. Your Committee is convinced that there is nothing to prevent legislation on the part of the State, in practically every instance where the Federal Government has not assumed to legislate. It is remarkable that the Federal Government has never assumed by treaty, or laws, to *govern* the Indians within this State. It has by treaty guaranteed them in the possession of their lands, provided for the punishment of certain crimes of a more important nature, restrained them in their contracts with agents and attorneys respecting collection of claims, etc., but never provided any code of laws governing them. On the other hand, the State has, from its earliest existence, passed laws for their government and control, which have been approved by the Courts. In consolidating the laws of this State in 1909, the schedule of laws repealed shows about 160 chapters of Indian enactments running from 1779 to 1902, as repealed; so that the State has always assumed to act, while the Federal Government, for over a hundred years, has been content to withhold such action for the Indians of this State.

Ordinary justice requires that the Indian should be recognized in our Constitution, that he be guaranteed the protection of our laws and the process of our courts to enforce his rights. Experience shows that legislatures shift the responsibility to Committees of Investigation or to Congress, and when the Federal Government fails to act, as it has always done, the matter is abandoned and forgotten.

The amendment proposed is not intended to affect, nor can it in any way affect, the tribal lands of the Indians, nor does it interfere with the maintenance of their tribal relations. Its object is mainly to insure to the Indians justice among themselves by

abolishing the inefficient and often corrupt tribal courts which a few reservations have, and conferring the protection of our State courts upon all alike.

Your Committee has been requested to submit for the information of the Convention a condensed statement of the title and law governing Indian lands and the position of the law as to government of Indians in this State, and for that purpose submit the following:

### INDIAN LANDS IN NEW YORK

The United States never had, and has not now, any title or right to the lands of the Indians in this State. The title, that is, the preemptive right to all these lands was originally vested in either the commonwealth of Massachusetts under the grant to the colony in 1628, or in the State of New York under the grant to the Duke of York in 1664. This title is what has been called the preemptive right — that is, the right to extinguish the Indian title of possession, by purchase or treaty — after which the lands would belong to the State.

In 1786 the State of New York and the commonwealth of Massachusetts, with the consent of the United States, settled their differences, Massachusetts thereby ceding, granting, releasing and confirming to New York forever all its claim, right and title “to the Government, sovereignty and jurisdiction” of the lands claimed by the State of New York; and the State of New York ceding, granting, releasing and confirming to Massachusetts and to the use of the commonwealth, their grantees and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all their estate, right, title and property (the right of title of Government, sovereignty and jurisdiction excepted) in that portion of the said lands which included practically the whole of New York (except a mile along Niagara river) west of a line drawn north and south from a point 82 miles west of the northeast corner of Pennsylvania; together with some other lands between the Owego and Chenango rivers.

Massachusetts then ceded the like preemption right of all other lands claimed in New York to this State, and reserved the right to assign its preemption right to persons who thus would be able

to extinguish the Indian title; but purchases from the Indians were to be void unless approved by a superintendent appointed by that State and confirmed by it.

Massachusetts made various transfers of its rights to individuals and associations, and thus has divested itself of these rights, except the right to be represented at any extinguishment of the Indian title; and by contracts made with the Indians by these various assignees, with the consent of Massachusetts, New York and the United States, this preemptive title has been extinguished as to all the lands except those of the Allegheny, Cattaraugus, and probably about 1920 acres of the Tuscarora reservations. The remainder of the Tuscarora lands, 4329 acres, the Tuscarora nation owns in fee.

The Oneidas own 400 acres of land which they hold in severalty.

The Cayugas now have no lands in the State.

The Shinnecock Indians own 400 acres on Long Island in fee. They are largely a mixed race, few of them being full blood Indians.

The St. Regis Indians have 14,030 acres of land in Franklin County, the title to which is in the State, and the right of occupancy and possession in the tribe.

The Onondaga Indians have 7300 acres near Syracuse; the title to which is in the State, and the right of occupancy and possession in the tribe.

The Tonawandas have 7548 acres in the Counties of Erie and Genesee which they purchased, and the title to which is now in the State Comptroller of this State and his successors in office in trust for the tribe.

The Seneca Indians have 30,469 acres on the Allegheny reservation and 21,680 acres on the Cattaraugus reservation, the title to which is in the Seneca nation, subject to the preemptive right of what is popularly known as the Ogden Company, upon the extinguishment of the Indian title.

The foregoing comprise all Indian lands in the State.

The only claim of the United States Government is that as general guardian or protector of all Indians, and its general right to make treaties with them, and under its treaties with the Senecas, no disposition of their lands can be made without its consent. It



is therefore impossible for either the State of New York, the Indians themselves, the owners of the preemptive right, or all three combined to dispose of these lands without the consent of the United States. The extension, therefore, of the general State laws, and jurisdiction of the State courts over the Indians would have no effect upon these tribal lands.

#### GOVERNMENT OF INDIANS OF NEW YORK

The United States, first treating Indians as foreign nations, then as dependent nations, within its borders, made treaties with them until 1871, when by an act of Congress it forbade recognition of them as an independent nation with whom treaties could be made.

Act of March 3, 1871, Chap. 120. Sec. 2079, Revised Statutes. U. S. v. Kagama, 118 U. S. 375.

Prior to this, the only treaties made by the United States with New York Indians were for the purpose of insuring peace, settling boundary lines, and guaranteeing them and their posterity in the possession of certain lands, or consenting to the disposition of parts thereof. No treaty contains any provision for government of the Indians except that in the treaties of 1789 and 1795 with the six nations provision was made for surrender and punishment in cases of robbery, murder, etc.

The United States has never passed any laws for the government of Indians in New York except such as are of general application to all Indians, and there appear to be only two or three of these. One provides the method by which contracts made by an Indian for services relating to claims for lands and moneys due from the United States shall be made (U. S. Stat. Sec. 2103) and another is an amendment to the Penal Laws (Chap. 321, U. S. Laws of 1909) which provides for punishment and jurisdiction in case of certain crimes of Indians against the person or property of another Indian within the limits of any reservation, viz: murder, manslaughter, rape, assault with intent to kill, assault with a deadly weapon, arson, burglary and larceny.

This statute was before our Court of Appeals in *People ex. rel. Cusick v. Daly*, 212 N. Y. 183, where it was held that as the Federal Government has chosen to legislate on this subject it con-

trolled and excluded State legislation on the same subject. In this case the court seems to assume "that, in the absence of Federal legislation, the State has most ample power to legislate for the Indians within its borders." This is undoubtedly true because the United States Constitution nowhere prohibits it except as to treaties and regulations of commerce with the Indians. The only other restriction is the right claimed by the Federal government as guardian to legislate for their protection. The various State courts so construe the rights of the State, as witness *Farrington v. Wilson*, 29 Wis. 383, *Smith v. Smith*, 140 Wis. 599, holding that State courts have jurisdiction to appoint guardians of Indians though belonging to a distinct tribe. Also, *Stacy and another v. La Belle*, 99 Wis. 520, that State courts have jurisdiction of a contract in favor of a white man against an Indian belonging to a tribe and a particular reservation. This last case enumerates the cases in which a State may act in the absence of Federal legislation. See also, holding the same, 122 Ind. 541. (7 L.R.A. 782.)

Our courts hold that where jurisdiction is not conferred on peacemakers' courts, our courts have jurisdiction.

*Terrence v. Gray*, 165 A. D. 636; *Matter of Printup*, 121 A. D. 322; *Peters v. Tallechief*, 121 A. D. 309.

Also that our laws of descent and distribution apply to Indians.

*Hatch v. Luckman*, 155 A. D. 765.

Our own Indian law provides that State courts have jurisdiction where it is not conferred on peacemakers' courts. Art. 2, Section 5. Indian Law.

It also provides that Indians are liable on contracts not prohibited by law, but immediately forbids any action on a contract against any Indian of the Seneca or Tonawanda nation, or Onondaga tribe, though making no such provision for the Tuscaroras, St. Regis, Shinnecock, or any other tribe.

It also provides that the State laws as to marriage, annulment, and divorce apply to Indians, and that the State courts have jurisdiction; and then confers these powers exclusively, on peacemakers' courts of the Allegheny and Cattaraugus reservations only, probably granting these unusual powers to them because they are

the least civilized of all the Indians in the State. Even the Tonawandas who have peacemakers' courts, have no jurisdiction over marriage and divorce, and none of the other tribes have any kind of courts. While no State law has provided for Surrogates' courts among them, the Senecas of the Cattaraugus and Allegheny reservations have erected Surrogates' courts which probate wills and distribute estates. The other laws are of minor importance, and except for abolishing their so-called courts would not be interfered with by the amendment proposed. The general laws would not interfere in any way with tribal relations, nor management of tribal affairs.

That the State has power to govern Indians was decided many years ago by the Supreme Court of the United States in construing a New York statute of March 31, 1821, providing for removal of persons from Indian lands.

The court says: "The statute in question is a police regulation for the protection of the Indians from intrusion of the white people, and to preserve the peace. It is the dictate of a prudent and just policy. Notwithstanding the peculiar relations which these Indian nations hold to the government of the United States, the State of New York had the power of a sovereign over their persons and property so far as it was necessary to preserve the peace of the commonwealth, and protect these feeble and helpless bands from imposition and intrusion. The power of a State to make such regulations to preserve the peace of the community is absolute, and has never been surrendered." *People v. Dibble*, 21 Howard (U. S.) 366-371.

The United States Supreme Court seems to have settled the respective powers of the Federal and State courts and the power of a State court to act in the absence of Federal legislation in *The Minnesota Rate Cases*, 230 U. S. 352 et seq.

At page 399, the Court says:

"It has repeatedly been declared by this Court that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and when Congress does act, the exercise of its authority overrides all conflicting State

legislation.” And at page 402, after stating the nature of the legislation necessarily reserved exclusively to Congress, the Court farther says,

“ But within these limitations there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to these matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending Federal intervention.” \* \* \* \* “ Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action.”

For the Committee,

JAMES P. LINDSAY.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 27

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#### MEMORIAL PRESENTED BY THE SOCIETY OF TAM- MANY OR COLUMBIAN ORDER TO THE DELEGATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK

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JUNE 16, 1915

Whereas, There appear to be, and in fact there are, certain interests and influences at work to alter, subvert and abridge those fundamental principles of free government which by reason of the sacrifices of our forefathers are the heritage and birthright of our people; and

Whereas, For more than a century the historic Society of Tammany or Columbian Order has been the constant defender and champion of the masses.

Now, therefore, we, the Council of Sachems of that ancient and patriotic society and in pursuance of the traditional policy of the Columbian Order, do respectfully submit this memorial.

First. We denounce, as opposed to and in contravention of the doctrines of liberty enunciated in the Charter of Liberties and Privileges drafted by the first Colonial Assembly of this State in 1683, all attempts to tamper with or change the right of trial by jury as it now exists. When, in the days preceding the formation of this Republic, the representatives of the people of the Colony of New York enacted that "All TRYALS shall be by the

verdict of twelve men, and as near as may be peers or equals and of the neighborhood and in the county Shire or Division where the fact shall arise or grow Whether the same be by indictment infermacon declaration or otherwise against the person offender or defendant," they laid down a guarantee of freedom wrung by their forebears from a despot at a cost too great for calculation.

Yet there are those intrusted with the task of preserving unimpaired these treasured principles, who would, overnight, substitute for them the theoretic notions of unpatriotic legal reformers, forgetting the tremendous price so paid for the privilege of trial by common-law jury — the most precious gem in the diadem of liberty.

Second. The power of the people to elect those who are to sit in judgment upon their liberty and their property rights should never be abrogated; least of all should that power be placed in the hands of a privileged and exclusive coterie, whether composed of lawyers or laymen.

In the undisguised effort being made to deprive our citizens of the right to be judged by judges of their own selection, we perceive an inevitable return to the days of Jeffreys — those black and despairing times when a favored sycophant passed upon the life and liberty of the masses, at the behest of the power which had selected him to wreak its private vengeance. Substitute for a Jeffreys an unscrupulous attorney selected by an insidious and powerful combination of money and monopoly, the greatest menace of modern society, and you have a possibility of injustice and tyranny which will all too soon ripen into a probability. The power of selecting judges should never be placed in the hands other than those of the people themselves. Therefore, and in no uncertain terms, we decry the effort to bring about the appointment rather than the election of judges. The influences which would tamper with our jury must not be permitted to steal our judiciary too.

Third. "Taxation without representation" still exists in this otherwise Excelsior State. We demand that you accord to the tax-burdened city of New York some measure of relief from its rural taxmasters; that our metropolis with its population of 5,000,000 receive that fair and just proportion of representation

in the State Legislature to which its share of the task of maintaining the State entitles it.

This city of New York is and of right ought to be the free and untrammelled metropolis of the western world; and it is your duty to accord and grant it an unequivocal home rule so that we shall not be at the mercy of rural communities, who do not and in the nature of things cannot understand what is essential and necessary for its growth and welfare.

JOHN F. AHEARN,

ASA BIRD GARDINER,

WAUHOPE LYNN,

GEORGE W. PLUNKITT,

HENRY W. UNGER,

WILLIAM DALTON,

LOUIS F. HAFFEN,

CHARLES F. MURPHY,

JOHN J. SCANNELL,

THOMAS DARLINGTON,

GEORGE W. LOFT,

THOMAS F. McAVOY,

EDWARD C. SHEEHY,

*Council of Sachems of the Society of Tammany  
or Columbian Order.*





# IN CONVENTION

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## DOCUMENT

No. 28

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### REPORT OF THE COMMITTEE ON CONSERVATION OF NATURAL RESOURCES RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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JULY 30, 1915

Mr. Dow, from the Committee on Conservation, to which was referred several proposed amendments in relation to conservation of forest lands, reports by proposed amendment entitled "Proposed constitutional amendment to insert in the Constitution a new article in relation to the conservation of natural resources" (Int. No. 708), which was read twice and said committee reports in favor of the passage of the same, which report was agreed to, and said proposition ordered printed and referred to the Committee of the Whole.

The Committee on Conservation of Natural Resources herewith presents the following reasons in support of its report:

The Committee was called upon to consider two basic questions: First, the determination of the policy of the State in respect to the preservation of its Forest Preserve; and second, the administration of all the natural resources of the State, free from political interference.

In respect to both of these fundamental propositions and to the

numerous incidental propositions that have been presented to it, the Committee has held public hearings and executive sessions; has fully considered all amendments referred to it, and all suggestions made to it; and, after thorough deliberation, has reached the conclusions embodied in its report.

The propositions submitted to the Committee on Conservation, and from which they have drawn suggestions, were as follows:

- Pr. No. 10, Int. No. 10, proposed by C. H. Young.
- Pr. No. 25, Int. No. 25, proposed by J. S. Whipple.
- Pr. No. 37, Int. No. 37, proposed by R. B. Smith.
- Pr. No. 71, Int. No. 71, proposed by C. H. Young.
- Pr. No. 84, Int. No. 84, proposed by E. N. Smith.
- Pr. No. 129, Int. No. 129, proposed by H. L. Austin.
- Pr. No. 154, Int. No. 154, proposed by W. B. Dunlap.
- Pr. No. 208, Int. No. 207, proposed by A. P. McKean.
- Pr. No. 220, Int. No. 219, proposed by G. H. Bunce.
- Pr. Nos. 128-247, Int. No. 128, proposed by H. L. Austin.
- Pr. No. 299, Int. No. 295, proposed by W. P. Bannister.
- Pr. No. 316, Int. No. 312, proposed by A. J. Baldwin.
- Pr. No. 375, Int. No. 370, proposed by Charles M. Dow.
- Pr. No. 382, Int. No. 375, proposed by A. J. Baldwin.
- Pr. No. 445, Int. No. 433, proposed by Ferris J. Meigs.
- Pr. No. 450, Int. No. 438, proposed by G. E. Greene.
- Pr. No. 492, Int. No. 480, proposed by Charles M. Dow.
- Pr. No. 584, Int. No. 569, proposed by E. M. Angell.
- Pr. No. 585, Int. No. 570, proposed by E. M. Angell.
- Pr. No. 586, Int. No. 571, proposed by E. M. Angell.
- Pr. No. 647, Int. No. 631, proposed by T. A. Leary.

*The Forest Preserve.*—As to the policy of the State in respect to the Forest Preserve, your Committee adopts the following language of the report of David McClure for the Committee on Forest Preserves, made to the last Constitutional Convention, under date of August 23, 1894, and reading in part as follows:

“That your Committee has reached the conclusion that it is necessary for the health, safety and general advantage of the people of the State that the forest lands now owned and hereafter acquired by the State, and the timber on such lands, should be preserved intact as forest preserves and not under any circumstances be sold.”

Your Committee thus reports the present language of section seven of article seven of the Constitution relating to the preservation of the Forest Preserve as wild forest lands, with the exceptions that it recommends that the Department of Conservation be "empowered to reforest lands in the Forest Preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely; but shall not sell the same". This exception, in the opinion of the Committee, will prepare for reforestation and more adequately protect the State forests from destruction by fire.

*Administration.*—In determining the question of administration, your Committee was called upon to deal with considerations which are peculiar to the question of conservation. It seemed necessary that your Committee should provide for continuity of policy and freedom from political control, which in their opinion is indispensable to proper management of the Forest Preserve. They deemed that these ends could best be secured by an unpaid board which, from the nature of the work and the opportunity for State service it offers, would attract to it men of a type whose services no salary could secure. Such a board will be deliberative in function, and will shape the policy of administering the natural resources of the State, in response to public sentiment, and for the best interests of the State as a whole.

By appointing commissioners for overlapping terms of nine years, and providing that they can only be removed by the Governor on charges, permanency of personnel and continuity of policy are secured.

By specifying that each judicial district in the State shall be represented on this board, every portion of the State has its spokesman, and as a consequence, the people as a whole will feel that their voice may be heard, and thus public confidence and support will be better guaranteed.

Extensive reforestation is provided for, in order that the large tracts of State-owned land, now bare, may be reclothed with forests, to the improvement of the water holding capacity of the soil and the enhancement of the Forest Preserve as park and recreation ground.

The practice of forestry throughout the State is encouraged and

the department given discretionary power to promote forest management upon the large areas unsuited to agriculture.

The purchase of additional lands within the Blue Lines which bound the forest parks within the Forest Preserve, is not only recommended, but a plan for securing funds for such purchases is provided. Systematic purchasing of lands within the Blue Lines would consolidate the present holdings, making administration more economical, and at the same time, secure control of lands upon whose forest cover depends the regular flow of our most important streams, and insure perpetuation of the water supply of the State and its municipalities.

By making it possible, if deemed advisable, to extend the fire protection system to include the entire State, your Committee feels that it is providing for the safety of forest lands. Most sections of the State have suffered heavily in the past from forest fires through lack of an efficient protective organization. In such cases, this department may, at the solicitation of citizens or acting upon its own discretion, install a local State fire warden for the purpose of preventing and suppressing such forest fires.

Concerning the regulatory powers of this department, your Committee deems it advisable to empower it to enact the necessary rules and regulations concerning fish, game, birds, shellfish and crustacea, subject to the veto of the Governor. This power should not only lighten the load of the Legislature to a considerable extent, but also result in less confusion and better co-ordination of the fish and game laws, with increased efficiency and equity.

Regarding the personnel, civil service regulations are to be enforced, with the exception of the superintendent, emergency employees and laborers.

The existing provision permitting the use of three per cent. of the Forest Preserve for water storage purposes is retained without any change whatever, as is the provision that any citizen may bring an action for violations of the provisions of this article (the final clause of section seven).

To avoid inflicting hardships upon communities and individuals who have for years occupied lands now belonging to the State, the Department of Conservation is given discretionary power to issue licenses to occupants of that class. These licenses are revoca-

ble and are limited to cases where occupancy commenced before December 1, 1909, and to permanent residents.

The final change to be mentioned is the one whereby the City of New York may use for water supply purposes three small specified tracts owned by the State in Greene and Ulster counties. Such use is felt to be of necessity to the city, and by clearly specifying the parcels in question, no extensive easements are granted.

(Signed) :

1. CHARLES M. DOW  
Chairman
2. EDWARD N. SMITH
3. GEORGE CLINTON
4. LOUIS MARSHALL
- 5.
6. RUSH RHEES  
(Reserving right to dissent to mandatory appropriation.)
7. OLIN H. LANDRETH  
(Reserving the right to dissent to the limitations placed on the powers of the Commission.)
8. FERRIS J. MEIGS  
(Except for the too narrow limitations placed on some of the discretionary powers of the department, I approve.)
9. H. LEROY AUSTIN  
(But dissenting as to the nine-headed commission and mandatory appropriation, for reasons which I will state.)
10. WM. P. BANNISTER  
(Reserving right to dissent to mandatory appropriation.)
11. EDWARD M. ANGELL  
(Being in favor, however, of broader powers in the Commission.)
12. W. BARLOW DUNLAP
13. ARTHUR J. BALDWIN  
(Reserving the right to dissent to mandatory appropriations.)

14. M. J. O'BRIEN
15. TIMOTHY A. LEARY
16. GEORGE A. BLAUVELT  
(Reserving right to dissent.)
17. JOHN G. SAXE

The majority report is signed by all the members of the Committee, except Mr. Whipple.

Messrs. Dow, Smith, Clinton, Marshall, Dunlap, O'Brien, Leary, and Saxe sign without restriction.

Messrs. Landreth, Meigs and Angell reserve the right to dissent as to the limitations placed upon the powers of the department.

Messrs. Rhees, Bannister, Austin and Baldwin reserve the right to dissent from the provision for a mandatory appropriation, and Mr. Austin also from the form of administration.

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#### MAJORITY REPORT

Mr. Angell presented the following majority report:

#### SUPPLEMENTAL STATEMENT RELATING TO THE RESTRICTIONS PLACED ON THE DISCRETION- ARY POWER OF THE CONSERVATION DEPART- MENT AS PROPOSED BY THE COMMITTEE ON CONSERVATION OF NATURAL RESOURCES

The undersigned members of the Committee on Conservation of Natural Resources, while in hearty accord with all the provisions of the majority report, disagree with the conclusion of the majority of the Committee that none of the restrictions of use in the present Constitution should be relaxed. We believe that the limitations in the majority report are too restricting in their effect upon the operations and do not offer an opportunity for the proper development of the State's natural resources.

The Committee has reported a plan for the organization of the department along lines which should insure continuity of purpose, free from partisan control, by men of high character, whose sole purpose will be to serve the best interests of the State in the preservation, the development and enhancement in value of its

natural resources. We believe that they should be entrusted by the people with the duty and the power to work out the problems before them, and to that end they should be given greater latitude under the Constitution — a latitude which will enable them to exercise their discretion in many particulars upon important questions of policy. The majority seem to believe in prohibition of use. We believe in protection and conservation, and conservation is not prohibition. We favor making provisions in the Constitution which will permit, under rules and regulations to be fixed by the Conservation Department, the following:

I. The building of highways in the Forest Preserve.

II. The leasing of camp sites of limited area for limited periods on restricted portions of the Forest Preserve.

III. The sale by the State of lands in the Forest Preserve outside of the Adirondack and Catskill parks, except the land contiguous thereto and the islands in and the lands adjacent to Lake George.

IV. The classification of the lands of the State in the Adirondack and Catskill parks into two areas, one of which shall be forever held as wild forest lands, and which shall include the lands upon the mountain tops and the lands in and around the lakes and major streams, and such other lands as for any reason the Commission shall determine should be so classified; and the second area to include all the other lands of the State within said parks, with a provision that the Conservation Department may cut, sell, and remove any part of the timber thereon which is mature or detrimental to forest growth, in accordance with the principles of scientific forestry, and for the purpose of increasing the growth of the forests. Such lands, however, to be forever kept as forest lands and the forest cover thereon to be maintained and perpetuated.

Our reasons for desiring to incorporate the foregoing provisions in the Constitution are as follows:

I. Under the provisions of the present Constitution and under the proposed amendment proposed by the majority of the Committee it is impossible to build highways in the Adirondacks or Catskills through or upon the lands of the State. These lands are owned by the people and should be made accessible to them so that

they may more easily go there for health and recreation. The forests should not be locked from access to the majority of the people of the State. Such highways would, in addition, furnish the best possible fire protection because they would be broad fire lanes and besides would enable the forest rangers quickly to reach the locality of the fire and extinguish it before it has acquired headway.

II. The leasing of camp sites should be permitted for largely the same reasons. The Adirondacks and Catskills should be opened to the use of the people of the State by leasing to them camp sites of a limited area and for a limited time. This would not only be a means of substantial revenue to the State but would furnish during the time most needed a fire fighting force. Fires are less frequent where camps are occupied, for camp site lessees would become interested in seeing that no fires devastated their camps, and they would thereby furnish a great protection to the property of the State.

III. The State owns about 250,000 acres outside the Adirondack and Catskill parks in isolated areas where they serve no useful purpose but are a constant and increasing expense to the State. The Conservation Commission and practically every organization and individual in the State interested in this subject, have, for many years, advocated the sale of these lands and the devotion of the proceeds, estimated to be not less than \$1,000,000, to the purchase of other lands within the Adirondack and Catskill parks.

IV. Lands in the Adirondack and Catskill parks should be classified by the Conservation Department into areas as above outlined, one of which should be held as wild forest land, and the other as utilization forests.

The State owns approximately, 1,800,000 acres in the Forest Preserve, an area larger than the State of Delaware and about half the size of Connecticut. It is fair to say that 1,250,000 acres of this area are covered by heavy forest growth. The average annual growth is estimated by competent authority to be 200 feet per acre, or an aggregate annual wood crop of 250,000,000 feet of lumber, worth approximately \$1,000,000. This is now an absolute economic loss to the State, for an amount equal to the annual



growth annually falls from decay and its value is gone forever. Under proper forest management the annual growth could be taken each year and still the necessary forest cover maintained. This would mean the removal annually of not over two per cent. of the trees standing on the lands. The growth and quantity of forest trees would be increased, and the value of the Forest Preserve for water storage purposes be undiminished. If the part to be set aside in the first area to be forever held as wild lands on which no cutting should be allowed, be estimated at one-third to one-half of the whole area the above estimate would be decreased to \$500,000 — the amount asked for annually by the Committee. The carrying charges of the Forest Preserve are not less than \$365,000, exclusive of the interest on the amounts paid by the State for these lands.

The Conservation Department has for years advocated a change in the Constitution which would make unnecessary this vast economic waste. The platform of the Republican and Democratic parties for the year 1914, upon which platforms all the delegates to this Convention were elected, demanded a change. The Camp Fire Club of America, The Association for the Protection of the Adirondacks, the Empire State Forest Products Association, the Committee of Engineers, representing national and local professional engineering societies, and many other associations and individuals having knowledge of the subject, and no personal interest, have advised a procedure similar to that here advocated. The Legislature of the State at its last two sessions has passed a concurrent resolution as a proposed constitutional amendment, as follows:

“The prohibition of section seven shall not prevent the cutting or removal of mature, dead, or fallen timber or trees detrimental to forest growth, on lands constituting the Forest Preserve, nor the leasing of camp sites and the construction of roads and trails necessary for protection against fire, and for ingress and exit. The Legislature may authorize the sale of lands outside the limits of the Adirondack park and the Catskill park as such parks are now established by law. The proceeds of such sales of lands shall be set apart in a separate fund and used only for the purchase of lands or for reforestation in such parks.”

The third annual report of the Conservation Commission for the year 1913 says: “Nearly all the merchantable material in a

forest is contained in a few of the larger trees. The larger trees are but a small proportion of the whole stand, therefore, their removal does not injure the forest cover. The purpose could be best accomplished by classifying the Preserve into areas which should be maintained as protective forest and into other areas which could be used for wood production. The former would include mountain tops, steep slopes, or other places where it might be difficult to maintain the forest cover, and which should not therefore be lumbered. The latter would include the lower and more level sections where operations could be profitably conducted without injuring the forest cover, leaving, however, belts around lakes and other places where the aesthetic or camping interest was more important than the commercial."

This method also has the endorsement of Henry D. Graves, Chief Forester of the national preserve, and an authority of the highest standing, who in a letter to the chairman of the Conservation Commission under date of July 18, 1915, wrote in part as follows:

"Undoubtedly considerable parts of the Adirondack Preserve should be retained as pristine forests for the recreation and esthetic enjoyment of the people. I believe, however, that it would be equally unfortunate for the Constitution to prevent the people of the State from carrying out, after expert advice and public consideration, a policy of practical forest management on certain parts of the Adirondack lands or any other lands owned by the State where it is determined to be the highest use which can be made of that particular portion of the public holdings."

This is likewise the method proposed by the head of the New York State Forestry colleges at Syracuse and Cornell in numerous letters, and in testimony before the committee at its public hearings. It is also the method by which the Japanese government manages its forests, as stated by Mr. Nokai, a director of the natural forests of Japan, now on a visit to this country.

The last Democratic State platform, adopted in the year 1914, contains the following language:

"The Constitution, in relation to the preservation of forests, should be so amended as to permit a profit to the State, to be derived from the scientific preservation and cultivation of our forest lands, at the same time protecting them against exploitation by private interests."

The Republican State platform, adopted at the time the Republican delegates-at-large to this Convention were nominated, contains the following upon this subject:

"We favor conservation and utilization of the State's forests and waters under conditions which will safeguard the rights and interests of the State. The holdings by the State of forest lands should be enlarged and adequately protected against fire and waste."

Gifford Pinchot in a letter to the Chairman of this Committee under date of July 7, 1915, wrote in part as follows:

"I am in favor of a constitutional provision which will permit the cutting of timber, not only dead and down, but mature and ripe, in the Adirondacks, as perhaps you know, and I am enclosing herewith a report made to the Camp Fire Club in 1911, which deals with the matter."

The Empire State Forest Products Association, at a meeting held in Utica November 12, 1914, recommended that — "The Constitution should be so amended that the Legislature may provide:

(1) For the sale of mature, dead and down timber being and standing in the Forest Preserve, as now or hereafter constituted, and for the removal of timber so sold in accordance with the principles of scientific forestry.

(2) To sell the lands in the Forest Preserve outside the Adirondack and Catskill Parks.

(3) To lease camp and cottage sites in the Forest Preserve.

(4) To provide for the construction of roads, trails and fire lines or lanes in the Forest Preserve.

(5) To set apart the proceeds of the sales of lands and all other net revenue from the Forest Preserve in a fund, to be used only for the purchase of lands in the Adirondack and Catskill Parks, for the reforestation of lands owned by the State in said Parks and for such other purposes for the benefit of the Forests in said Parks as the Conservation Commission shall provide.

(6) To raise funds sufficient to continue the acquisition of forest lands and lands suitable for growing forests not belonging to the State within the Adirondack and Catskill Parks."

The Association for the Protection of the Adirondacks, and

the Camp Fire Club of America, by their sub-committees, at a joint meeting held in New York City July 16, 1914, voted in favor of the following proposed amendment to the Constitution:

"The prohibition of Section 7 shall not prevent the cutting or removal of [mature] dead or fallen timber or trees, detrimental to forest growth on lands constituting the Forest Preserve, nor the leasing of camp sites, nor the construction of roads and trails necessary for protection against fire and for ingress and egress. The Legislature may authorize the sale of lands outside the limits of the Adirondack Park and of the Catskill Park as such Parks are now established by law."

In an editorial in the July, 1915, number of "American Forestry", the official organ of the American Forestry Association of which Dr. Drinker, President of Lehigh University, is president, the following is stated:

"The prejudice against cutting of green timber is deeply ingrained in the minds of New York citizens, due to distrust of her politicians. The situation demands the complete elimination of politics from the management of the State forest lands. Should the Convention be able to accomplish this, they need no longer hesitate to permit cutting. On the Minnesota National Forest, the timber around the shores of the lakes and other points accessible to the public is preserved and protected although the Forest Service has the technical right to cut and remove it. Areas of especial value can be so classified, and preserved in their primitive condition. The remaining areas, inaccessible to the public, can be logged by methods which preserve the forest cover, secure reproduction and prevent waste from decay. These methods have been fully demonstrated on the National Forests. Must New York, through timidity, close her eyes to progress, and either lock up her forest resources, or imperil them with ill-considered half measures? Now is the time for the State to establish a sane and orderly administration which will bring the Adirondack forests to a plane equal to that of the wonderful Black Forest of Germany, which while serving as the recreation ground for the entire region, supports hundreds of villages and thousands of persons dependent entirely on the forest industries for their existence."

The New York Evening Mail in its edition of July 27, 1915, in an editorial entitled "Tying Up the State Forests," states its opinion of the report favored by the majority of this Committee in the following words:

"The Conventions Committee on Conservation has decided to recommend the continuance of the present constitutional prohibition against any attempt at scientific forestation of the lands of the State. No timber is to be cut on the State lands except what is dead or fallen. The construction of roads in the Forest Preserve will be forbidden, as well as the future leasing of camp sites.

"The whole cause of forestry, and to that extent of conservation, has been greatly and stupidly hindered in this State by the inability under which the State authorities rest to make any economic or scientific use of any part of the State's forests, even as a matter of experiment, instruction or example."

"The simple fact is that the Adirondack forests are not considered by our sapient legislators to be the property of the people, but of the rich 'camp' owners and club men who go up there to enjoy themselves in a luxuriant manner in the summer and to shoot deer and other game in the autumn. For their purposes the forest seems well enough in its roughest condition. Scientific forestation makes no appeal to them whatever.

"We have a chance in the State of New York for almost as great a development of our forest wealth as has taken place in the empire of Germany. The central portion of our two great mountain ranges contains 7,200,000 acres, which is under nominal fire protection. The State-owned Forest Preserve consists of 1,825,852 acres, to which it is proposed to add largely. But none of this land is under forest management; this, as we have said, is already forbidden by the Constitution. In the meantime we are prevented by the selfish caprice of a few millionaires from realizing so desirable a thing as that which is seen in Prussia, where the 6,700,000 acres of State forest yield a net annual income of \$20,500,000, without any deterioration of the forest whatever."

These are but a few of the many authorities which might be referred to which indicate conclusively the error which will be made by this Convention if it perpetuates and still further limits the already too narrow policy in the care, use, and development of the Forest Preserve, of which the majority of the Committee is in favor. True conservation does not consist in locking up our resources where the wealth therein contained must be forever lost, but in the utilization of these resources under wise regulation.

EDWARD M. ANGELL.

OLIN H. LANDRETH.

FERRIS J. MEIGS.

**MINORITY REPORT**

Mr. Whipple presented the following minority report:

**MINORITY REPORT FROM THE COMMITTEE ON CONSERVATION OF NATURAL RESOURCES, AND REASONS THEREFOR**

The undersigned, a member of the Committee on Conservation of Natural Resources, disagreeing with the Committee's report in several, separate and distinct particulars, makes the accompanying minority report setting forth the reasons for disagreeing and in what particulars the majority report should be amended, and asks that this dissent and minority report be placed on the General Orders calendar and considered in connection with the majority report in the Committee of the Whole.

Some of the reasons that impel a disagreement with the majority of the Committee are as follows:

1. On the question of the administrative features intended to be provided for by the proposed constitutional amendment reported by the majority of the Committee, it is believed that the plan so proposed by the Committee, which is for an unpaid board of nine members, is not justified by experience, will be unworkable, will prove inefficient and be a detriment to the public service.

It is also believed that the class of men, who will from necessity be selected as members of such a board, will be men of wealth, whose business interests require nearly all of their time and attention. That they, or many of them, will have little or no actual knowledge of the subject matter to be under their control, and no time or disposition to give it the constant, daily attention this intricate, many headed, difficult problem that is bounded by the limits of the State, demands.

That the conflicting opinions of the members of this large board, based upon insufficient knowledge will result in inaction and in the end will not produce good results.

The whole history of the department for more than twenty-five years, establishes the fact that such undesirable results follow when more than one man has been at the head of the commission. The large commissions have always been inefficient, and made little or no progress, responsibility has not been centered and they have never worked well.

The State has tried a commission of seven, then one of four, then one of three, then one of five, then one of four, then one of three, then a single commissioner, which form was continued until 1911, when a return was made to a three headed commission and after again trying that plan for four years we are back to a single headed commission.

An examination of the work in the department will disclose the fact, that there was more constructive work done under a single headed commission from 1903 to 1911, a period of eight years, than there has ever been done in a much longer time by any larger commission.

With this experience and this record it does not seem wise to the dissenting member of the Committee, that the State should again go back to a larger commission and especially when it is to be tied up for twenty years by a Constitution.

Further, the proposal is objectionable because the members of the board are to be asked to give their time, best services and best thought for a long period of years without pay. It sounds fine in theory but to work without pay never has and never will cause men to do their best for a considerable length of time.

It is objectionable because responsibility is not centered. It is objectionable because the Governor does not appoint the superintendent and have power to remove him. In fact such a board is just as objectionable from every standpoint as a like board would be for the Agricultural Department, the Highway Department and many other departments. It would be much like the vermiform appendix in man, useless, and should be cut off.

2nd. The majority proposition makes no provision for roads of any kind through this immense tract of forest land.

A park without roads in the right places, is of much less use to the people than it would be with proper roads.

What would have been thought when Central Park in the City of New York was established, if no roads had been provided for and the commission prohibited from making any?

In time, this wonderful woodland park will be to the people of the whole State what Central Park is to the people of Greater New York.

These parks and playgrounds of the people are for use. Easy

and convenient ways should be provided for ingress and egress. Therefore this minority report suggests at least that a State highway may be provided for by the Legislature, running from Old Forge northerly along the Fulton Chain of Lakes and thence northerly to connect with some main highway at or near the Saranac Lakes. Such a road would run through the most beautiful part of the Adirondacks, would furnish an acceptable and beautiful way from the southern side to get in and out, and would afford better opportunity for protecting as many as forty miles of woodland from fire.

For these reasons dissent is made to that part of the majority report.

3rd. Inasmuch as the majority report provided that dead trees and timber may be taken out where necessary, for better fire protection and reforestation, but declares such material cannot be used, dissent is made to that proposition because it is not comprehensive enough.

There seems to be no good reason why such material should not be used at least for fire wood for domestic purposes by the resident people, (there are several thousand of such people) some revenue obtained and thereby relieve a bad situation that exists in many places where the people have to pay as much as \$14.00 a ton for coal, while millions of cords of stove wood are in sight in dead and down trees, doing no good to any one and in many instances making a dangerous situation and opportunity for more fire.

4th. Dissent is made to that portion of the majority report that provides for permits, ratifying and making legal the occupancy on State land of five or six hundred people, who for years have been occupying the people's property without legal authority and in violation of the provisions of the Constitution. That proposition appears to be a proposed premium on doing wrong and to the exclusion of all those who obey the law and do right. It singles out a special class who have been violating the law, gives them special privileges and excludes all others from enjoying like privileges.

For the foregoing reasons this minority report is made and amendments to the majority report suggested in these particulars,



with the hope that the reasons for dissenting are so plain and reasonable, that the Convention will adopt these minority propositions.

J. S. WHIPPLE.

## PROPOSED CONSTITUTIONAL AMENDMENT

### Article.....

Section 1. The department of conservation shall consist of a single commissioner, appointed by the Governor and subject to removal by him on charges after an opportunity to be heard. The commissioner's term of office shall be six years. His compensation shall be fixed by law. He shall appoint and may, at pleasure, remove a deputy commissioner and fix his salary. He may also appoint all necessary subordinates, all of whom shall be selected from eligible lists from open competitive examination conducted by the Civil Service Commission.

Subject to the limitations in this article contained, the department shall be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance and administration of the forest preserve; the control, conservation, prevention of pollution, and regulation of the waters of the State; the protection and propagation of its fish, birds, game, shell-fish and crustacea, with the exclusive power, subject to the veto of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof, and shall exercise such additional powers as from time to time may be conferred by law.

§ 2. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the trees or timber thereon be sold, removed or destroyed. The Commission is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same, except for fire wood for domestic purposes.

§ 3. The legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, for the canals of the State and to regulate the flow of streams. Such reservoirs shall be constructed, owned and controlled by the State, but such work shall not be undertaken until after the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the State and the Legislature shall provide a charge upon the property and municipalities benefited for a reasonable return to the State upon the value of the rights and property of the State used and the services of the State rendered, which shall be fixed for terms of not exceeding ten years, and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works.

§ 4. The legislature may authorize the use by the city of New York for its municipal water supply of certain lands now belonging to the State located in the townships of Hurley and Shandaken in the county of Ulster and in the township of Lexington in the county of Greene, for just compensation.

§ 5. The legislature shall, for twenty years from and after the adoption of this Constitution, provide annually by bond issue or otherwise, the sum of not less than \$500,000 for the purchase of real property within the Adirondaek and Catskill Parks, the reforestation of lands, and the making of boundary and valuation surveys. Such funds shall be expended by the Department of Conservation on the approval of the Governor.

§ 6. The legislature may provide for the construction of the State highway from Old Forge along the Fulton Chain of Lakes and thence to connect with a highway at or near the Saranac Lakes.

§ 7. A violation of any of the provisions of this article may be restrained at the suit of the people, or with the consent of the Supreme Court in Appellate Division, on notice to the Attorney-General at the suit of any citizen.

**MINORITY REPORT**

Mr. Austin presented the following minority report:

**MINORITY REPORT AS TO THE PROPOSED CONSERVATION ARTICLE**

With the general policy proposed by the Conservation Committee as to the preservation of the State's natural resources I am in entire accord; it is only with the methods by which it proposes to carry out this general policy that I am at variance.

I dissent from the proposal for a nine-headed unpaid Conservation Commission for the reasons stated by Delegate Whipple in the minority report, submitted by him, and for the further reason that I have very grave doubts as to the advisability of giving these nine unpaid commissioners the absolute power, subject only to executive veto, to make the fish and game laws for the State.

I well realize the many inconsistencies which have arisen from the multitude of fish and game laws enacted by the Legislature, and I think the Conservation Department should have much discretion delegated to it in the matter of protecting wild life, but we are going too far when we say that the Legislature shall be deprived of even a reserve power over this subject.

I also dissent from that part of the majority report which would place in the Constitution a provision commanding the Legislature to appropriate at least five hundred thousand dollars annually for the purchase of lands, reforestation, the making of surveys, etc.

The proposal to appropriate specific sums of public money by a constitutional provision, operative for twenty years in the future, does violence to all our accepted principles of State finance, and seems to be indefensible from any view point. It may well be proper for the Constitution to declare that sufficient moneys be provided by the Legislature to carry out the State policy as to conservation therein enunciated, as has been done with reference to canals by Section 9 of Article VII of the present Constitution; but to command the Legislature to appropriate half a million of dollars for twenty years to come, regardless of conditions, which are sure to change, and of variations in the State revenues and expenditures which are bound to occur, is an entirely different proposition.

It is my personal belief, based upon my own experience, that an annual appropriation of the sum suggested will be desirable for many years to come, but the appropriation of money to carry out the State's activities is essentially a legislative function, not that of a Constitution. The necessities of one State department must be considered in connection with the needs in other directions and the probable revenues; these cannot be absolutely determined five, ten or twenty years in advance. Therefore, having defined the general policy which we believe the State should pursue, it seems that we should go no further, for we must assume that the Legislature will provide the funds necessary to carry out that policy, if consistent with the other demands upon the public treasury. Unless this be true our entire theory of the administration and control of State finance should be discarded.

H. LEROY AUSTIN.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 29

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OFFERED BY MR. M. J. O'BRIEN AS A SUBSTITUTE FOR  
PROPOSED AMENDMENT No. 752, Int. No. 699

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#### PROPOSED CONSTITUTIONAL AMENDMENT

To amend section nine of Article I of the Constitution, in relation  
to the right of electors to select candidates for office

*The Delegates of the People of the State of New York, in  
Convention assembled, do propose as follows:*

Section nine of article one is hereby amended to read as follows:

§ 9. No law shall abridge the right of the people peaceably to assemble and to petition the government, or any department thereof; *nor the right of the electors, or any number of them, to associate and select candidates to be voted for at any election for public office in such method as they may deem proper*; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool selling, book making, or any other kind of gambling hereafter be authorized or allowed within this state, and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.



# IN CONVENTION

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## DOCUMENT

No. 30

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### MINORITY REPORT ON PROPOSED CONSTITUTIONAL AMENDMENT NO. 765 (Int. No. 194)

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JULY 29, 1915

Mr. Leggett presented the following minority report in relation to "Proposed constitutional amendment to amend Article III of the Constitution by inserting a new section, in relation to delegation of legislative power in matters affecting employees," (No. 765, Int. No. 194.)

The minority of the committee opposes the adoption of this proposal for the following reasons:

That no instances were quoted to the committee calling for additional power in the Legislature to remedy the evils sought to be cured.

That the wording of the proposal is so broad as to easily make possible the adoption by executive boards of rules and regulations that would cover ground not contemplated by the Legislature.

This would at the best constitute the board a Legislature without the safeguards of a Legislature and without its responsibility to the people, and at the worst, it would go so far as practically to defeat the will of the Legislature.

J. C. LEGGETT.





# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 31

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#### MINORITY REPORT ON PROPOSED CONSTITUTIONAL AMENDMENT NO. 419 (Int. No. 407)

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JULY 29, 1915

Mr. Leggett presented the following minority report in relation to "Proposed constitutional amendment to amend Article III of the Constitution, in regard to the power of the Legislature to prohibit manufacturing in structures used for dwelling purposes." (No. 419, Int. No. 407.)

The minority of the committee respectfully opposes the adoption of this proposal for the following reasons:

That the right of the individual to earn his own living and that of his family by the labor of his own hands in his own home through the pursuit of a lawful and innocent occupation should never be at the risk of the tyranny, caprice or mistake of the Legislature.

That this is a right which has existed from time immemorial and which the state should not be permitted to take away.

Men have organized rebellions and suffered death for less cause than would be possible under this proposal.

J. C. LEGGETT.



IN CONVENTION

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DOCUMENT

No. 32

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REPORT OF THE COMMITTEE ON STATE FINANCES,  
REVENUES AND EXPENDITURES, RELATIVE TO A  
BUDGET SYSTEM FOR THE STATE

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AUGUST 4, 1915

Mr. Stimson, on behalf of the Committee on State Finances, Revenues and Expenditures, presented the following memoranda:

THE RAPIDLY INCREASING GROWTH OF GOVERN-  
MENT EXPENDITURE

Your Committee has pointed out in its recent report to the Convention on Article VII of the Constitution the very rapid increase in debt of the State of New York and of its political subdivisions; it has pointed out that the State debt, whether measured in the aggregate or per capita, now greatly exceeds the debt of every other State in the nation and that the same is true of the debt of its political subdivisions, taken either in the aggregate or per capita. It now invites attention to the similar rapid increase in the cost of the government of the State. The expenditures out of the general fund of the State, exclusive of interest on the canal and highway debts and of the free school fund, have increased from \$7,163,831.18 in 1885, to \$42,408,-

488.24 in 1914. This represents an increase in general running expenses of nearly 600 per cent. in thirty years. This increase of expenditures, as shown by five-year periods, is as follows:

1885 .....	\$7, 163, 831 18
1890 .....	7, 200, 056 54
1895 .....	12, 066, 646 97
1900 .....	17, 696, 398 85
1905 .....	24, 511, 946 95
1910 .....	34, 791, 576 01
1914 .....	42, 408, 488 24

During this period the population of the State has increased only 82 per cent. During this period the assessed valuation of real and personal property liable to taxation in the State has increased from \$3,224,682,343 to \$12,070,345,088, a percentage of only 274. Furthermore, a large portion of this increase in assessed valuation does not represent a real increase in property but is due either to new methods of taxation, like the Special Franchise Tax, first levied in 1899, or to increases in percentages of assessment, as, for example, in New York city, where in 1903 the rate of assessment was raised from between 67 and 75 per cent. to approximately 90 per cent.

Until recently the State has not felt the strain of this disproportionate rise in expenditures because it has been able to meet them by its revenues from indirect taxation. But it has now become apparent that the limit of indirect taxation has been practically reached. Indirect revenues fell off \$1,900,000 from 1913 to 1914 and the Governor in his message of January 7, 1914, stated that in his opinion the maximum indirect revenue had been practically reached.

According to the report of the Census Bureau the governmental cost per capita of the State government of New York rose from \$2.47 in 1895 to \$5.41 in 1914, an increase of 235 per cent. where the population of the State had gained only 53 per cent. during nineteen years. During that period assessed valuations in the State rose only 171 per cent., including both of the fictitious

increases above mentioned. In other words, the State government cost each resident more than double the amount it cost in 1895.

This rapidly increasing per capita cost of government is a phenomenon which is not peculiar to New York State but is occurring likewise in other State governments, and also in the Federal government although to a less extent than in New York. The cost of the Federal government in thirty years prior to 1908 has increased nearly 400 per cent., while the increase in the population was less than 84 per cent. The growth in ordinary expenditure for carrying on that government, excluding interest on the public debt but including payments for pensions and many public works, rose from \$135,000,000 in 1878 to \$637,000,000 in 1908. (See Statement of Hon. George B. Cortelyou, former Secretary of Treasury, in *North American Review* for April, 1909.)

Hon. James A. Tawney, the last Republican Chairman of the Committee on Appropriations of the House of Representatives, made the following statement in 1909:

"In no period, except in time of war, have the expenditures of our national government increased so rapidly, both in the aggregate and per capita, as these expenditures have increased during the past eight years. This fact may well cause our people not only to pause and consider the cause of this very large increase in the annual expenditures of the government, but also to consider the necessity of checking this growing tendency towards excess."

The Hon. John J. Fitzgerald, the present Democratic Chairman of the same Committee in the House of Representatives, in a hearing before your Committee on May 26, 1915, pointed out the same rapid increase in the expenses of government and said:

"We have reached a point in our Federal expenditures, now aggregating a hundred million dollars a year, when it is necessary either to very greatly increase the taxes levied by the Federal government or else to curtail present activities or stop expanding the activities of the government.

"We have reached about the limit of revenue under our present systems and if the government is to continue to expand and increase its activities there must necessarily be very greatly increased revenues." (Document No. 15, p. 4.)

The same accelerating rate of the cost of government is to be found throughout the States, although the figures show that New York is the worst offender. The average cost of government of all of the States of the Union rose 105.9 per cent. from 1903 to 1913, according to the Census Bureau figures. During that time the population of the States rose only 20 per cent. Of these the cost of government of the States of the Middle Atlantic division rose 160.3 per cent. and of New York State rose 200.2 per cent.

To sum up, we find that throughout the country the amount of money spent on government, both State and National, is increasing much more rapidly than the population and much more rapidly than the sources of supply, in the shape of property subject to taxation.

Undoubtedly this increase of cost is largely due to the fact that government has greatly extended its activities. There is no reason to suppose, however, that any real or permanent check can be put upon this increase. It arises out of the constantly increasing complexity of modern life and modern business and the increasing density of our population. So long as these factors continue, greater and greater demands will be made upon the activities of government. They represent an economic pressure which is constantly growing.

Out of these facts arises the corresponding and increasing need for sound financial methods in conducting the business of government. With States, as with individuals, the habit of expenditure breeds extravagance, and it cannot be assumed that the completion of particular projects will counteract the desire to spend. America is only at the threshold of her problem. If, under our present methods, the cost of government has already reached the limit of reasonable taxation, it only makes it clear that we should examine our methods in order to prevent unnecessary waste.

It has been frequently pointed out that the United States is substantially the only civilized country where, in both its National and State governments, a scientific budget system is unknown. No financial plan is presented to our Legislature in public each year by the men who are responsible for the conduct of government. No considered estimates of the future, no material whatever for comparison with the past, is presented by our executives

to the Legislature in such a way that that body and the public can understand them and hold the spenders of our public money responsible; instead, our appropriation and revenue bills are made up in the comparative secrecy of legislative committees and rushed through in the hurry of the final days of a legislative session.

The effect of this looseness of method has long been apparent in the results of our expenditures. For many years we have been spending half as much upon our army as Germany has spent upon hers, and a still greater percentage of what France has spent upon hers, but where their expenditure has produced forces which are now astonishing the world by their size and efficiency, our expenditures from the lack of the proper working machinery between the executive and Congress which a budget system would supply has largely been wasted upon unnecessary army posts in the districts of influential congressmen. The same is true in respect to our navy, where money necessary for dreadnoughts is spent on useless navy yards in favored localities. Our river and harbor appropriation bills have obtained the name "Pork Barrel Bills" because their contents are looked upon more from the standpoint of the political requirements of legislators than of national routes of transportation. The same lack of responsible aim has marked our appropriations for public buildings.

Nearly thirty years ago this fundamental defect in our national system was pointed out by Mr. James Bryce in that leading study of our institutions, *The American Commonwealth*, where he said, quoting an American publicist:

"A thoughtful American publicist remarks: 'So long as the debit side of the national account is managed by one set of men, and the credit side by another set, both sets working separately and in secret without public responsibility, and without intervention on the part of the executive official who is nominally responsible; so long as these sets, being composed largely of new men every two years, give no attention to business except when Congress is in session and thus spend in preparing plans the whole time which ought to be spent in public discussion of plans already matured, so that an immense budget is rushed through without

discussion in a week or ten days — just so long the finances will go from bad to worse no matter by what name you call the party in power. No other nation on earth attempts such a thing or could attempt it without soon coming to grief, our salvation thus far consisting in an enormous income with practically no drain for military expenditure.' . . . Under the system of congressional finance here described America wastes millions annually. But here wealth is so great, here revenue so elastic, that she is not sensible of the loss. She has the glorious privilege of youth, the privilege of committing errors without suffering from their consequences." (The American Commonwealth, Vol. I, pp. 177-179.)

These words were uttered over a quarter of a century ago. The figures of our taxable resources alluded to above make it evident that this period of youthful privilege is now over and that we in America can no longer claim the same exemption from the conditions governing other communities.

In view of the foregoing facts your Committee believes that the only alternative to a grave danger of general discontent arising out of the constantly increasing burden of taxation is a thorough and drastic revision of our financial methods.

Your Committee has made a careful study of the methods of financial legislation of this State. It has had before it gentlemen representing all phases of legislative and executive activity of the State including men who had held or still occupied the positions of Governor, Comptroller, Speaker and chairman of the principal committees of both houses of the Legislature. It has had before it men thoroughly familiar with those activities in the Federal government, including ex-President Taft and Mr. Fitzgerald, Chairman of the Committee on Appropriations of the House of Representatives. It has examined into the budget methods of the cities of this State and budget methods in vogue in Great Britain, Canada and other countries.

As a result, it presents its conclusions as to the chief defects in the present methods of financial legislation in the State of New York and finds that the following are the chief causes of waste and extravagance in those methods:



## DEFECTS OF PRESENT SYSTEM IN NEW YORK STATE

## I

LACK OF RESPONSIBLE REVISION OF THE DEPARTMENTAL  
ESTIMATES

Under the Laws of 1910, chap. 149, the annual estimates of the various departments, bureaus and commissions of the State are to be submitted by them to the Comptroller on November 15th of every year for transmission to the Legislature. The Comptroller has no power to revise or reduce these estimates when submitted or even to compel their timely submission. His only function is to assemble them and transmit them to the Legislature. No other executive officer has any power to revise or co-ordinate them.

As a result, they are made up by the various bureau chiefs who consider only their own desires without regard to the revenues or other needs of government and as a result the aggregate of these estimates mounts into a sum which bears no responsible relation either to any consistent plan for expenditures for the coming year or to any plan for raising revenue. In size they are limited only by the enthusiasm of each bureau chief for the activities of his own bureau.

The evil is very much aggravated by the fact that there is no adequate organization of these bureaus and commissions into a limited number of departments. The estimates of the various officers, instead of being sent to the Comptroller through a departmental chief who can revise and reduce the estimates of his subordinates, are transmitted directly to the Comptroller. Almost the only exception to this lack of system is in the somewhat limited oversight exercised by the Fiscal Supervisor of Charities.

As a result, when these estimates reach the Legislature they are regularly so high that very little attention is paid to them. They are necessarily treated as mere requests for money desired rather than as responsible estimates of the amounts required. The Legislature is therefore itself forced to undertake the work of proposing and formulating for the first time a program of the annual expenditures.

## II

THE LEGISLATURE IS NOT THE PROPER BODY TO PREPARE A  
FINANCIAL PLAN OF EXPENDITURE

Your Committee has reached the conclusion that the Legislature is not the proper branch of the government to initiate such a program of annual expenditures and that in attempting to do so it labors under the following insuperable disadvantages:

(a) Its proper work is legislative; it has no administrative control or authority over the bureaus and departments through which the moneys of the State are expended and necessarily cannot have such authority. It is therefore without the consistent regular information as to operating difficulties, problems, methods and costs which would naturally come to the superior officer of those bureaus. Instead it must act upon such information as it can acquire through hearings held by committees, meeting only occasionally.

The Legislature cannot exercise executive supervision to compel a given bureau to try to produce the desired result with less money by adopting a more efficient method. It cannot exercise executive authority to reconcile conflicts between overlapping or encroaching bureaus so as to prevent duplication of effort and expense. In a word, it cannot produce the constant necessary team play and co-operation which is essential to economy.

(b) The Legislature is under the further disadvantage that its members, instead of being responsible solely to the State as a whole, are each responsible to and dependent upon a single district of the State. A financial program made up in the first instance by the Legislature necessarily tends to represent a compromise or bargain between different districts rather than the viewpoint of the State as a whole. The treatment of the multitude of separate items necessarily tends to that process of give and take which has become so common in America as to be stigmatized by the terms "log rolling" and "pork barrel."

(c) In the third place, the very fact that the program is made up in the Legislature at once tends to shield it from real criticism by the Legislature. No body can adequately criticize its own work. This applies both to criticism by the majority and minority parties. A real budget program presented by the executive

to the Legislature should receive, and in other countries regularly does receive, criticisms and suggestions, even from the executive's own party members. The viewpoint of the man who grants money is different from the viewpoint of the man who asks for it, even when they both belong to the same party. Under our methods the man who makes up the program is the same man who afterwards leads the debate on the majority side. No criticism whatever from him can be expected. It is his own program. On the other hand, so far as the minority is concerned, they also have participated in the work of the committees and, to a certain extent, their views have also been accommodated. And even in those cases where they differ with the program, inadequate opportunity for the discussion of the issue thus presented has been afforded under our methods, as will be shown under the following subdivisions. As a result, the budget debates of the Legislature, after the appropriation bill has been made up, have become formal and perfunctory.

(d) Finally, the fact that no program for consideration and discussion takes form until the Legislature itself makes up the appropriation bill, tends to destroy publicity and opportunity for debate. Instead of there being an entire financial program laid before the Legislature by a responsible executive early in the session with which every citizen in the State can familiarize himself, comparing its items with the corresponding expenditures of preceding years, and as to which, therefore, he can put himself in a position to understand the issues and debates, no citizen now in the ordinary course learns anything of any program until the Ways and Means Committee reports the appropriation bill so late in the session that there is no opportunity for effective suggestion or criticism. The bill has then received the approval of the various elements and leaders in committee and the subsequent discussions mean little. This evil has been accentuated by the misuse of the emergency message, under which, during the past twenty-one years, every appropriation bill except one has been hurried through in the final hours of the session without the necessity even of being printed and lying on the desks of members for three days. We think it is safe to say that under ordinary conditions not only is the public ignorant of the items of appropriation bills until they are enacted into Law, but the same ignorance applies to the mem-

bers of the Legislature outside of the one or two men who control the conduct of the bill.

It is, therefore, almost impossible to create a real issue, a real debate on the subject of economy and without the publicity of such an issue and such debate your Committee does not believe that real economy can be attained.

### III

#### NO COMPLETE FINANCIAL PROGRAM OR BUDGET AT PRESENT EXISTS

The third general criticism which your Committee makes of our present system is that nowhere, either in the Legislature or outside, is there now ever formulated or made public a really complete financial plan or budget. Such a budget, as it is universally understood in communities or institutions which practice budget-making, should contain the following essential elements:

(1) A responsible estimate of the proposed expenditures for the coming fiscal year.

(2) Financial statements of the current resources and liabilities of the State, including its debts and various funds, and including, for the purpose of comparison, a statement of its current expenditures and revenues in past years.

(3) A proposition of the new measures of taxation, if any, which will be necessary to meet the proposed expenditures of the coming year.

To see how far short we fall now of having any such information available it is only necessary to recall the issue which arose last winter between the present State administration and its predecessor over the question as to whether a direct tax of \$18,000,000 was needed. When it is recalled how difficult it was for the ordinary citizen to determine the rights of a controversy over the necessity of a tax amounting to nearly thirty per cent. of the total revenues of the State, one can form some conception of the confusion of our present methods and the desirability of a complete annual budget responsibly prepared.

## IV

THE NECESSITY OF RESTRICTIONS AGAINST ADDITIONS TO THE  
BUDGET ON THE FLOOR AFTER IT IS PREPARED

The fourth general criticism which your Committee makes is that there is no restriction now imposed against additions at the behest of individual members being made to the budget after it is formulated and proposed by its framers. Your Committee believes that the absence of such restriction would be fatal to any budget system. The spirit of mutual accommodation is necessarily so strong between members of all legislative bodies that without protection against its effect the best laid program of financial expenditure is liable to destruction on the floor of the houses. Your Committee learned of an instance last winter where an appropriation, the real though not ostensible purpose of which was to help a member of the Legislature to re-election in his own district, after it had been rejected by the Finance Committee of the Senate, was forced through on the floor of that body by the united vote of both parties, the Chairman of the Finance Committee and the leader of the minority alone voting against it.

Restrictions against such increases or additions exist in the Legislatures of all other English speaking countries. They originated in the oldest standing rule of order of the House of Commons, dated July 11, 1713, which forbids that body to raise the amount of items presented in the budget. Similar restrictions exist in the Constitution of the Dominion of Canada as they did in the Constitution of the Southern Confederacy. They are a familiar and most successful feature of the charters of all the largest cities of this State and your Committee believes they embody a principle which is indispensable to successful budget practice. This principle has been stated by one writer as follows:

“Upon the creation of just such a situation as that the efficiency of representative government depends. Its essential principle is to fix the representatives so that *they* cannot put their hands into the till; then they will keep a good watch over those who *do* handle the money. Congressmen will take a very different view of pork barrels from that now held when they can no longer help themselves to the pork.” (Ford on the Cost of Our National Government, p. 115.)

## V

THE PRESENT SYSTEM REVERSES THE REAL RELATION OF THE  
EXECUTIVE TO THE LEGISLATURE AND SURRENDERS IMPOR-  
TANT POWERS TO THE EXECUTIVE

Your Committee further finds that the system of permitting the Governor to veto items in appropriation bills prepared by the Legislature has resulted in transferring to the Governor, to a large extent, the historic function of the Legislature of holding the purse strings of the State. The present system presents a singular reversal of the proper relation which should maintain between the Executive and Legislature. Instead of the Executive coming to the Legislature with a request for funds, which it is the province of the Legislature to pass upon and either grant or refuse, our system has gradually resulted in the Legislature presenting to the Executive appropriation bills which he is expected to reduce. Instead of the man who is to spend the money presenting to the body which is to grant the money his request for their final decision, the latter body, in substance, draw their check in blank and present it to the Executive for him to determine how much of it he cares to use. Your Committee finds the present system has resulted in the Legislature, under pressure of local and individual interests, passing many appropriation bills with larger aggregate than they believed to be proper in reliance upon the hope that the Governor would afterwards prune them down to the proper dimensions. In other words, our attempt to accomplish by the use of the Executive veto what elsewhere has been accomplished by the legislative rule against additions to the budget mentioned under subdivision IV above, has very nearly resulted in an abandonment to the Executive of the priceless legislative function of holding the purse. Our Legislatures, instead of placing upon themselves during their own deliberations, a self-denying ordinance, like the rule of the House of Commons above mentioned, have left it to the Governor to make the necessary corrections afterwards.

Not only is our system an abandonment of essential legislative power, but it is open to other grave dangers to which a proper system would not be open. Instead of presenting his budget at

the beginning of the session, the Governor uses his veto power after the session is over, and can make it an instrument of punishment or reward. Instead of presenting a public plan of expenditures and revenue which can be subjected to the fullest publicity and the most searching scrutiny, and where an attempt to recommend expenditures for other motives than the interest of the State as a whole could be discovered and discussed, the Governor exercises his veto power in a series of disconnected acts under circumstances which make such discovery less easy.

## VI

### THE PRESENT SYSTEM PREVENTS ANY REAL DEFENSE OR CRITICISM OF THE BUDGET IN PUBLIC

Finally, as a result of our present method, the members of our Legislature are deprived of adequate opportunity to ask questions in public concerning the estimates of the men who know most about them.

In those communities where the budget is presented by the Executive to the Legislature, it follows as a natural matter of course that the men who have prepared the estimates and the financial program present themselves personally before the Legislature to defend and to be examined about them. The Legislature thus has an opportunity to learn at first hand the propriety of the requests which are made and to cross-examine the men who make them under such circumstances that the public can get a clear conception of the strength and the weakness of any proposed budget. Such a method of public criticism can accomplish results which are quite impossible to our present system of committee work which, at best, is conducted without effective publicity.

### RECOMMENDATIONS

Your Committee has prepared and presents herewith a proposed amendment which embodies its recommendations, made for the purpose of meeting the foregoing defects in our present system and of providing the machinery for a budget system in the State. Your Committee is glad to report that on many of its conclusions

and recommendations its members were unanimous and that all such recommendations, after having received careful discussion, are supported by a large majority of its members.

*First.—Estimates must be first revised and classified within the respective departments*

Your Committee were unanimous in their belief that a system should be introduced which would compel a greater sense of responsibility on the part of department heads in submitting there estimates of requirements. Such a reform will be greatly facilitated in case the recommendations of the Committee on Governor and State Officers are adopted under which it is proposed that the various bureaus, commissions and offices of the State shall be grouped into a limited number of departments at the head of each of which shall be an executive chief. The amendment proposed by your Committee makes it the duty of such department head to classify the estimates of his department according to his judgment of their relative importance. He is thus made responsible that they be presented in such a way that any subsequent pruning can be done with intelligence. This duty of classification will necessarily tend to make the head of each department better acquainted with the needs of his various bureaus and subordinates and will tend, in the opinion of your Committee, to increase the responsibility which such department head will feel as to his estimates.

*Second.—The estimates should then be revised and co-ordinated by a central executive authority*

Your Committee were unanimous in believing that these departmental estimates should be revised by a central executive authority before transmission to the Legislature. This is the nub of a real budget system. It means that that executive authority must be responsible for preparing and completing a consistent plan for the proposed expenditures of the State under which those proposed expenditures will be brought into proper relation to the expected revenues. It means that some central authority on the executive side of the government must take the responsibility of cutting down the estimates which are too high,



of deciding between those which are conflicting, and of recommending an aggregate which will bear a proper relation to the revenues; it means the introduction of a system of planning and foresight where none now exists.

*Third.—This central authority of revision should be the Governor*

The very great majority of your Committee are of the opinion that this ultimate responsibility of revising the estimates and preparing the budget must rest with the Governor.

(a) Upon him rests the constitutional duty of seeing that the laws are enforced. The departments whose estimates comprise by far the greater portion of the budget are the instruments through which he performs that constitutional duty. His relation to them is such as to make it his duty to constantly and naturally receive information as to their functions and puts him in a position to exercise that supervision over their co-operation and team work which is absolutely necessary for economy. He is the man who can insist that a given department shall do its work with less money or decide between several departments which is to be given the preference in respect to available revenues. He is the man who, under the present system, though less effectively, makes a similar decision when he prunes the appropriation bills with his veto.

(b) Secondly, as the head of the State he is the one who can best explain and defend a given fiscal policy to the people of the State and he is the one who, above all others, is interested in upholding before the people of the State a policy of economy and who should be held responsible to them for the success or failure of such a policy.

*Fourth.—Objections to a board of revision*

No board composed of several co-ordinate members could perform these functions with equal efficiency. The necessary authority over subordinates would be absent and the sense of responsibility would be diminished.

(a) The state has already made such an experiment with a board of estimate created under chapter 281 of the Laws of 1913, and the defects above mentioned caused its complete failure.

The board there created was composed of the Governor, Lieutenant-Governor, President and Chairman of the Finance Committee of the Senate, Speaker and Chairman of the Ways and Means Committee of Assembly, Comptroller, Attorney-General and Commissioner of Efficiency and Economy. It was thus composed of four legislative and five executive members, and violated the principle above referred to, which requires that the function of proposing a budget should be separated from the function of disposing of it and that the former should belong to the Executive and the latter to the Legislature. Although the board under the statute was ostensibly given ample power for the preparation and revision of estimates, it at once became deadlocked and was unable to agree. It failed wholly to formulate definite proposals and never succeeded in proposing any budget to the Legislature. It was shortly abolished by statute. Its fate amply demonstrated the error of confusing instead of defining responsibility.

(b) It has been suggested to the Committee that the Comptroller and the Attorney-General should share with the Governor this responsibility in the matter of revising the estimates. Your Committee believes that the Comptroller should be consulted in respect to the budget but should not be committed to it in advance. He is the auditing officer of the State. His services should be at the disposal of the Legislature in criticising and disposing of the budget. If the Comptroller were made a member of a budget board he would be committed to that budget and his subsequent criticism would be foreclosed and useless.

The amendment which your Committee submits, therefore, provides that the Comptroller shall receive a copy of the budget and that he shall have an opportunity thereafter to present his views in regard to it before the Legislature. This we believe to be the true function which he should play.

As to the Attorney-General, your Committee wholly fails to see what services he could render in the revision of the estimates. He is not a financial officer; he is not the superior of the departments who render the estimates, and to impose upon him such a duty would simply be an interference with his functions as chief law officer of the State and would impose a useless burden upon him.

*Fifth.—Public hearings upon the budget*

The amendment submitted by your Committee provides that the Governor shall give public hearings upon the estimates at which he may require the attendance of department heads and their subordinates. The purpose of your Committee is to make the function of revision of the estimates as public as possible. This will minimize the danger of unfairness of allotment between the different activities of the State and will give an opportunity for public information and criticism.

*Sixth.—Estimates of Legislature and judiciary*

The Governor's power of revision should, in the opinion of your Committee, not be extended over the estimates of the legislative and judicial branches of the State.

Under your Committee's amendment such estimates are prepared by those branches and transmitted to the Governor. They necessarily form an integral part of the budget or plan of expenditures for the ensuing year but the Governor is given no power to revise or reduce them and may simply present them to the Legislature with such recommendations in respect to them as he may be advised. He, however, retains his present power of veto over these estimates.

*Seventh.—Submission of budget to Legislature*

The budget, when completed by the Governor, must be submitted to the Legislature on or before the first of February. It must contain all of the elements above specified.

Your Committee believes that the essentials of a complete budget should be so carefully prescribed in the Constitution that there will be no danger of the system failing from lack of an adequate standard to which future administrations must conform. The experience of some cities of the State justifies this precaution. We believe that the elements enumerated in the proposed amendment contain such requisites.

Your Committee believes that it is essential that the budget should be presented as early as possible in the session and, after careful investigation, believes that the first of February will give the Governor time for its preparation and yet allow it to reach the Legislature in time for full discussion.

*Eighth.—Appearance of Governor, Comptroller and heads of departments before the Legislature*

Under the proposed amendment these officers are to have the right and be subject to the duty, when requested by either house, to appear and be heard and to answer inquiries relative to the budget. In order to provide for a proper, permanent and dignified system for such appearance, it is made the duty of the Legislature to provide for the necessary procedure by law. This right and duty of appearance follows as a necessary corollary of the budget system. Where such a budget is prepared by one branch of the government and submitted to another, it necessarily carries with it the right to be heard and the duty to submit to interrogation with reference to the measures which are thus proposed. It follows the natural method by which men in all the affairs of life dispose of such an issue, namely, by meeting face to face in discussion and interrogation. It also insures that the plans of the Governor, embodied in the budget, will receive essential publicity and criticism on the part of the State. If the budget has been unfair to any department or bureau, it provides a means by which that fact can be made public. If there should be any issue between the Governor and the Legislature as to proper economy or adequate expenditure, it insures that this issue will be discussed in a deliberative forum, under parliamentary rules, instead of as now, merely upon the stump and in the press. It affords an invaluable opportunity by which the people's representatives, without the expense, excitement and necessary hostility of special investigations into departments, may keep themselves informed as to the financial working of every branch of the State government. For these reasons "Question Day" in the House of Commons has been called the center of gravity of the British constitution. (See Cambridge Modern History, Vol. VI, pp. 810-811).

*Ninth.—Relation of the Governor's budget to other financial legislation*

Your Committee has very carefully considered this difficult question. On the one hand, it is essential to the success of the whole system that the Governor's budget, when presented, be given a fair trial and that it be considered on its merits without the easy

temptation to the Legislature to throw it aside and begin over again a new budget of its own; on the other hand your Committee believes that, particularly when a new system is thus being introduced, the Legislature should retain not only adequate power to correct executive abuses, but the right to initiate financial legislation by methods which will not disrupt the budget.

The amendment which your Committee presents, therefore, provides that the Legislature, in acting upon the budget, may reduce or strike out but not raise the items therein. It thereby applies to the proposed bill the old self-denying ordinance of parliamentary procedure above mentioned. To leave in the Legislature the right to raise those items would, as your Committee believes, leave the door open to an entire abandonment of the system and an immediate return to present methods and would also tend to destroy all incentive on the part of the Governor to prepare the budget carefully in advance and present it with a sense of responsibility. But to meet the objection that the Governor might misuse his power and either starve objects which the Legislature deems worthy or trade with individuals or localities, the power of initiation of financial legislation is left with the Legislature subject to but two restrictions:

(1) It must not be exercised until after the budget is disposed of by both houses; and

(2) Such appropriations must be made by separate bills, each for a single work or object.

We believe that this will adequately protect the budget system and yet keep it free from executive abuse. A Governor sincerely devoted to economy will have the opportunity to present a complete financial plan, drawn in the sole interest of the State at large. He will have all the aid which public presentation and discussion can give him in presenting that plan to the Legislature. The Legislature must approach it in the spirit of a fair critic and not of a rival constructor and yet, if individual abuses have crept into the budget, they can be remedied. The Legislature is left free to inaugurate new State activities, provided it does them in the manner prescribed. By postponing such additional legislation until after the budget has been acted on both the State and its representatives in the Legislature will have opportunity to fully

know all the revenue available, if any, beyond the regular departmental expenses.

We believe that this proposal will enlist in the working out of this problem all of the probabilities for success which can come through publicity and a sense of responsibility on both the executive and legislative branches of the government. It also follows closely all of the lines of precedent which successful budgets in other communities and institutions have followed in the past.

*Tenth.—Fiscal Year. Expiration of Appropriations*

Your Committee further believes that the beginning of the State's fiscal year should be moved forward to July 1, with a view to bringing the period to be financed closer to the time during which the estimates and budget for that period must be made. This change would put the termination of the year to be planned for three months nearer to the time when the plans are made than it is under the present system and by so much would facilitate more accurate forecast. Finally, we believe that the expiration of appropriations from time to time, two years from the date of their enactment, causes great and unnecessary confusion. It is therefore proposed that hereafter all appropriations shall expire three months after the end of a fiscal year. This would make all appropriations expire simultaneously, and yet would give time to permit the payment of any bills accruing late in the preceding fiscal year.

## BRIEF SUMMARY OF OBJECTIONS AND ANSWERS

1. The fear that the proposed budget system would deprive the Legislature of power or dignity is, we believe, a complete misconception. On the contrary, the Legislature would be restricted only to the extent of being protected from disrupting influences while considering the budget. It would retain power of initiation thereafter; and in addition, it would be restored to its lost position of dignified and effective control over appropriations.

Under present methods, financial legislation has been in danger of degenerating into a scramble for local favors and privilege; the proposed system makes it possible for the Legislature to consider from a State-wide viewpoint the broader financial interests of the State.

Under present methods the Legislature has been gradually surrendering its most vital power in financial legislation to the executive veto. The proposed system will restore that power and make it final.

2. Nor is there the slightest force to the claim that the proposed system would give undue power to the Governor. It would add not one iota to the power that he now possesses through the veto of items in the appropriation bills. Whereas now that power is subject to no review and thus may be used as an instrument of reward or punishment after the legislative session is over, the proposed system would deprive him of his veto as to budget items and would thus compel him to use his influence in advance, in the open, under the fire of legislative discussion and the scrutiny of the entire State. It would thus be the Legislature which would have the final word.

3. Of even less weight, in the opinion of your Committee, are the objections sometimes urged that the Governor, and especially a new Governor, would not have time to prepare a budget. It is believed that the burden would be lighter than under the present system under which the Governor must prune the appropriations within thirty days after the session, under all the added pressure of reviewing some five hundred other bills and without any of the assistance of the previous classification by department heads for which the proposed amendment provides.

Doubtless the burden would be heaviest on a new executive. But it is the familiar practice of each new administration in our first and second class cities to rely, to a large extent, upon its predecessor for its first budget. There is no break in government and the system is successful, as we believe it would be in the State government. The lengthening of the Governor's term from two to four years would greatly aid the efficient and intelligent preparation of budgets.

Undoubtedly in budget making as in virtually all other executive work, much of the work of investigation and comparison would fall to subordinates. But in view of the growing importance of the issue of economy and the probability of a direct tax for many years to come, no Governor could afford to shirk or delegate the ultimate decision. On the contrary, he would have a new and vital incentive to study the machinery of the State. He could

not risk the sure discovery of ignorance or neglect. He would be under a new compulsion to devise systematic and rational methods of saving, for on him would squarely fall, as it should, the responsibility for extravagance and to him would be given as never before due credit for wise economy.

4. We have already enumerated some of the reasons which require and justify the presence of the heads of executive departments and the government on the floor of the Houses of the Legislature in order to defend and answer inquiries about the budget. Critics of the budget system have assailed such a proceeding as novel and un-American. To answer such criticism it is only sufficient to remind the Convention that this procedure was practiced by the first national administration of this country under President Washington and his cabinet officers; that it has been introduced by an American Congress into the governments now in force in Porto Rico and the Philippine Islands; that it is a system in practice before the local legislatures of many of the largest cities of this State; and that it was strongly advocated by Justice Story in his Commentaries on the Constitution, and that it has since been earnestly recommended by a long line of American statesmen, including Presidents Taft and Wilson, and Senators George H. Pendleton, James G. Blaine, John J. Ingalls, W. B. Allison, O. H. Platt, Elihu Root and James W. Wadsworth, Jr. A practice recommended by such precedents and such authorities cannot be justly criticised as un-American.

In concluding, your Committee fully recognizes the difficulty of the subject and the responsibility involved in suggesting changes, no matter how well supported by authority and experience, into any system rooted in long-accustomed usage. But it has been fortified in its conclusions by recent investigations in other States, notably Minnesota, Iowa and Illinois, which resulted in recommendations essentially similar to those here made. It believes that the system which it advocates would make possible in this State a much needed adjustment of expenditures to revenues, and that it would bring into the finances of New York simple and common sense principles long familiar and admittedly indispensable in the affairs of everyday American business.

Respectfully submitted for the Committee,

HENRY L. STIMSON,

*Chairman.*



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 33

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#### REPORT OF THE COMMITTEE ON CANALS, RELATIVE TO PROPOSED AMENDMENT No. 779 (Int. No. 710)

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AUGUST 4, 1915

Mr. Clinton, from the Committee on Canals, reported by proposed amendment entitled "Proposed constitutional amendment to amend Section eight of Article VII of the Constitution" (Int. No. 710), which was read twice and said Committee reports in favor of the passage of the same.

which report was agreed to, and said proposed amendment ordered printed and referred to the Committee of the Whole.

Mr. Clinton, from the Committee on Canals, submitted the following statement of the reasons for the proposal to amend:

The approaching completion of the Barge canal improvement has made it necessary to amend Section 8 of Article VII by defining the canals to which the prohibition against sale, lease and other disposal in the present Constitution, applies. The retention of the language now in the Constitution might possibly lead to a misconstruction, it at least would leave the intent open to misinterpretation. In addition to this, questions have arisen heretofore in the courts, as to what properties used in connection with the canals were to be considered parts of them so as to be

within the prohibition against sale, etc. The Committee has therefore added to the language of the Constitution, clauses which are intended to include within the prohibition, canal terminals the Erie, the Oswego, the Champlain and the Cayuga and Seneca canal, as the same will be improved and become part of the Barge canal system, at the same time preserving the application of the prohibition to the Black River canal. Language has been used which saves as a portion of the Barge canal system, those parts of the existing canals which have been preserved as a part of that system by existing statutes, which are either amendments to the laws under which the Barge canals are being constructed, or separate statutes. The parts so preserved are, in some instances, needed auxiliaries as terminals or to connect with the Barge canals, manufacturing localities which would otherwise be cut off from direct connection with the improved canals. These are not many and do not impose upon the State the maintenance of any considerable portion of the old canals.

In addition to the parts preserved by existing statutes the Committee, after careful consideration, has concluded that the existing inland Erie canal from Tonawanda creek to connection with the Black Rock Harbor, and canal slips 1 and 2 in the City of Buffalo should be made a part of the Barge canal system, even though not enlarged to Barge canal capacity at present. Slips 1 and 2 in the City of Buffalo are needed for terminal purposes and should not be abandoned; and the inland Erie canal from Tonawanda creek to Black Rock Harbor, your Committee is decidedly of the opinion, should be saved as a part of that system in order to enable west bound boats with partial cargoes or without cargoes to reach Buffalo from Tonawanda creek without proceeding up Niagara River against the heavy current.

Under existing statutes the present Erie canal is preserved from Rome to Mohawk passing through the City of Utica. This was done because the Barge canal passes so far to the North of the manufacturing districts in that city that the expense to manufacturers of shipping by the Barge canal would be greatly increased if connection by the existing Erie canal, both east and west, were not retained. However, the saving of this part of the Erie canal in the City of Utica prevents the improvement of the

grade of the city streets at and in the vicinity of bridges crossing the canal. To relieve the municipal conditions and at the same time to save for the manufacturing industries, connection with the Barge canal through the existing Erie canal, your Committee has deemed it wise to insert language in the proposed amendment which will permit the present Erie canal between Schuyler and Third streets in Utica to be disposed of on condition that a flow of sufficient water from Schuyler to Third streets be maintained, as may be done by means of pipes or other conduits. This proposed amendment protects the manufacturing industries and will permit the lowering of the bridges and the street grades.

In view of the approaching completion of the Barge canal system, efforts have been made, and will continue to be made, to secure portions of the canals which may be abandoned for particular municipal and private purposes. In the opinion of your Committee this practice should be stopped as the result must be, if it be allowed to continue, that abandonment will not be properly safeguarded and the State will not receive proper compensation. Your Committee has therefore proposed an amendment to the effect that abandonment, sale or other disposition of canals or canal property which shall cease to be a portion of the canal system of the State shall be, pursuant to general laws, only, which shall secure to the State the fair value of the property.

Question having arisen under a recent decision of the Court of Appeals as to what the title of the State to property appropriated to canal purposes is, your Committee has deemed it wise to propose an amendment that announces that title to be in fee.

Maintenance of the supply of water for the canals, to protect commerce and navigation, and control over the flow of water in the prisms and channels, is paramount to the use of canal waters for any other purpose. Nevertheless, in certain localities and under certain circumstances (dependent upon the supply of water) there is at times more water than is needed for navigation, the use of which for power purposes can be permitted, subject to such control as will prevent creation of currents which will be impediments to navigation. This has been recognized heretofore and leases have been granted for the use of surplus waters which in their operation have been exceedingly detrimental and which have not compensated the State fairly for supplying the waters to the lease-

holders. Your Committee has therefore deemed it necessary, for the protection of the State, to propose an amendment permitting the leasing of surplus waters provided that the use thereof shall not in any way injure, impair, interfere with, or endanger navigation or the construction, use, maintenance, operation, the safety of the canals or of other property of the State. Your Committee has deemed it wise that no lease shall be granted in perpetuity and that there shall be reserved to the State the right, whenever in the opinion of those having charge of the management and operation of the canals, the needs of navigation required to terminate or suspend the same and to regulate and alter the amount of water to be used thereunder.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 34

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#### REPORT OF THE COMMITTEE ON CHARITIES, RELATIVE TO PROPOSED AMENDMENT No. 378 (Int. No. 371)

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AUGUST 5, 1915

Mr. Wadsworth, from the Committee on Charities, presented the following memorandum:

*To the Delegates to the Constitutional Convention:*

The Committee on Charities of the Constitutional Convention desires to call your attention to the provisions of the enclosed amendment (No. 378, Int. No. 371), introduced by Mr. Steinbrink, and hereby reported for your favorable consideration.

The importance of the department for the insane is shown by the fact that it includes 14 hospitals, over 33,000 patients, 6,000 employees and 200 medical officers. The appropriations necessary for caring for the insane and providing for their proper accommodation during the next fiscal year amount to approximately eight and one-half million dollars. The total number of admissions to the hospitals during the last fiscal year amounted to 7,956 and the discharges to 7,264. The average annual increase in population has amounted to about 800 patients during the last fifteen years. This is now the largest undertaking of a medical and curative nature maintained by any government in the world, and by the time of the next Constitutional Convention the population of

the hospitals will undoubtedly reach 50,000 or 60,000 and the number of employees 10,000.

The accompanying proposal amends Section 11 of Article VIII of the present Constitution and continues "a state commission in lunacy in which shall remain the management and fiscal control of the state hospitals for the insane (not including institutions for criminals and convicts) except insofar as such management may now or hereafter be delegated by the legislature to local boards of managers."

Section 11, as it reads at present, authorizes the State Commission in Lunacy to visit and inspect all institutions either public or private used for the care and treatment of the insane (not including institutions for epileptics or idiots).

Section 13 of the Constitution of 1894 provided that "existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, insofar as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature." This section indicates that the Constitution of 1894 intended to recognize not only the power of the Commission to visit and inspect institutions for the insane, but fully recognized the financial control of the institutions conferred upon the Commission by the Legislature in 1893 and the general administrative jurisdiction over the hospitals authorized by other statutes.

The Commission in Lunacy has had entire administrative and financial control of the State hospitals for the insane since 1893. You will observe that the provisions of the proposed amendment as submitted by this Committee merely continue the powers conferred upon the Commission in Lunacy by the Legislature prior to the amendments of 1894 and recognized in the Constitution at that time. Your Committee, after careful study of the administration of the hospitals for the insane, is firmly of the opinion that the present methods of management and control should be continued and should be clearly defined in the Constitution. The hospitals for the insane should be kept entirely out of the domain of politics and should not be liable to radical changes which, at the present time, may be made at any session of the Legislature.

As a result of several public hearings held by the Committee,

and investigations by sub-committees, and numerous communications which have been received from the friends and relatives of patients in the hospitals for the insane, it is convinced that those who are most concerned in the welfare of the hospitals are unanimously opposed to any change in the present methods of administration. The public hearings held by this Committee were attended by members of the boards of managers of all the hospitals, superintendents of a number of these institutions as well as representatives of various charitable, medical and other organizations. The Committee has also consulted many other acknowledged authorities familiar with the affairs of the institutions and the history of the hospital service, and finds that their views are fully in accord with those already expressed by us.

After a careful investigation of the subject this expression of views would seem to voice the sentiments of the entire people of the State.

While various propositions relating to the administration of the hospitals and charitable institutions of the State have been submitted to this Committee, we are of the opinion that the amendment which we are recommending for your approval is the only one which should be contemplated at this time.

In addition to the duties mentioned above, the Commission in Lunacy also inspects at least twice a year the institutions for insane criminals and convicts as well as twenty-four licensed private institutions.

An evidence of the standards maintained by this Department is shown by the recent award by an international jury at the Panama-Pacific Exposition of the highest prize to the State hospitals of New York.

The economical administration in the expenditure of these funds appears from the fact that the average annual per capita cost of maintenance of the insane in the hospitals was only \$208.91 during the last fiscal year, or, in other words, fifty-seven cents per day.

The entire care of the insane was undertaken by the State in 1889, at which time there was an insane population in the hospitals of 16,000. Since then it has grown to 33,000.

The magnitude of this undertaking as shown by these figures is such as to clearly indicate the inadvisability of combining this Department with any other. Consolidation without beneficial result is folly. To consolidate merely to promote an idea is without sound reason. Where a department or branch of government has attained a point of efficiency which marks the apex in the present state of the development of medical science at the very minimum cost, it necessarily follows that to combine its activities with those of other departments leads inevitably either to an impairment of its efficiency or an increase in cost of maintenance and probably to both.

The high standard of efficiency in the New York State hospitals as a result of the administration, which we propose to continue, has been such that it has been copied by others, and it is universally acknowledged that the care of the insane in New York has reached a higher standard than in any other State. The cost of caring for the insane in this State is lower than that in other States where the standards are not so high.

The history of the Department shows that the hospitals for the insane were governed by local boards of managers for thirty years, by a single Commissioner for sixteen years and by a Commission as constituted at the present time for twenty-six years.

The present method of administration was adopted by the Legislature after a careful investigation of the conditions prevailing in the State institutions, by a Senate committee.

The Charities Committee is therefore firmly of the opinion that there is not only no indication of a necessity of any change in the present method of government of the Department, but that any changes would be highly unwise and would seriously threaten the welfare of the insane wards of the State. To inaugurate a system of care in this State which has proved unsatisfactory in others would be highly disastrous.

We therefore urge upon the Convention the wisdom of continuing a form of government of the hospitals for the insane which has stood the test of the last twenty-six years and which seems to meet with the entire approval of the people of the State.

J. W. WADSWORTH,  
Chairman.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 35

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#### MINORITY REPORT ON THE PROPOSED BUDGET SYSTEM FOR THE STATE

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AUGUST 5, 1915

By Mr. Wagner:

I disagree with the report of the Finance Committee in that its conclusions and recommendations are in many substantial respects inadequate and inconsistent.

More particularly I submit that the report of the majority deprives the Legislature of the power which finds expression in the Federal Constitution, the father and mother of our state constitutions, to the effect that all appropriations should originate in the legislative branch of the government elected by and representative of the people who pay the taxes. Though this sentiment may not have been written in the letter, it has existed in the spirit of our State Constitution. The producers of public money should retain control of the public purse strings. This was the contention of the Barons who wrenched the Magna Charta from King John and in all the intervening years this policy has been the cornerstone of the structure of legislative government.

The majority report admits that the two prime requisites for a State budget are accurate information and complete publicity; and yet the constitutional provision which it proposes secures neither. It admits that the great need of our State finances is a scientific budget and then it proposes a budget without science.

It recognizes the evil of the present system of basing appropriations largely upon conjecture and yet it provides for a "guess" by the heads of the departments followed by a "guess" by the Governor, with the points of political advantage always in sight.

The report complains that appropriations are now made on "requests" and then continues "the very evil of which it complains in substance though it changes it in form.

Facts for a scientific budget can and should be secured by the same method through which they are secured in a court or in any other tribunal of public moment and civic interest. Such a method is embodied in the proposal introduced by Mr. A. E. Smith, Pr. 345.

The report holds that the Legislature is not the proper branch of government wherein appropriations should originate. While contending in one place that the Legislature should not surrender its historic control of the public purse strings, the report asserts in another place that the Legislature is not the proper branch of government to originate appropriations. If the Legislature be not the proper place to originate appropriations, then it would seem the United States has been traveling upon the wrong path for 130 years and still continues to pursue its devious way; if the Legislature be not the proper branch of government to originate appropriations, for a century or more the Legislature of New York has been exercising a duty erroneously given to it. Even before New York became a State, the colonial governors sent over here by the King of England voiced the sentiments which this report now approves. But the early colonists did not approve it. All the statesmen who have since helped make New York the Empire State of the Union did not approve it.

The majority report states that "a real budget program presented by the Executive to the Legislature should receive and in other countries does receive criticism and suggestions, even from its own party members". I submit that the application of the word "Executive" as applied to the budgets referred to is not warranted by the definition of the word "executive" in any standard dictionary of the English language, and I further submit that in the principal countries referred to the "budget" is really a "parliamentary" and not an "executive budget".

The prevailing report asserts that the present method of appropriation destroys publicity and opportunity for debate. Yet it is obvious that the proposed method secures publicity on routine matters of administration, where publicity is least needed and gives no guaranty whatever of publicity on special appropriations where publicity is vital to economy. Neither does it make adequate provisions for open and thorough debate.

The majority report complains further that appropriations are rushed through in the final hours of the session, but it fails to recommend a provision like the one to be found in the Constitutions of Louisiana and Mississippi, making it impossible to pass any appropriations during the last five days of the session.

It deprecates the lack of consideration given to appropriation bills but it fails to set a time limit for the introduction of such bills, nor does it suggest a method of supplying exact and scientific information to the members of the Legislature.

It states that the historic function of the Legislature is to hold the purse-strings of the State and it then proceeds to hand this historic function over to the Governor and make the Legislature a mere rubber-stamp on budget appropriations.

It condemns the present power of the Governor to punish opponents and to reward friends in the matter of appropriations, but it does not recommend a corrective for this abuse except in case of appropriations for mere matters of administration, thereby lodging in the Executive enormous possibilities thus to abuse his office.

It postulates the necessity of a "greater sense of responsibility" in appropriations, and then it discards the only method that can secure complete, open, definite and undeniable responsibility through compelling the heads of departments to swear to their estimates.

If this report is to be made the policy of the State, I suggest that it be carried to its logical conclusion. If publicity is desirable on mere matters of administration, it appears to me that it is especially desirable on special appropriation bills. If the Governor is to be prevented from making a political foot-ball of mere routine appropriations, he should be prevented from making a political foot-ball of special appropriation bills.

If I am correct in the opinions and conclusions heretofore expressed, it becomes manifest that the remedy proposed in the majority report is at best only partial and ineffective to consummate the desired financial reforms. I therefore respectfully submit to the Convention the following recommendations:

It is recommended that the legislature retain the power which it has always exercised of originating appropriations; on the theory that the source from which the money comes should retain control of the money and dictate the manner of its expenditure within the proper constitutional limitations.

Without receding from the recommendation last expressed, it would seem that the method proposed in the majority report, being imperfect as it now stands, should be perfected by the following amendment: It should be required that the head of each department swear to his estimates and classify them in a division of necessities, desirabilities or contingencies, as the case may be, according to the suggestion made by Governor Glynn at a hearing before the Committee on State Finances. Such sworn estimates should be submitted to the Governor, the Comptroller and every member elected to the Legislature at least fifteen days before the Legislature convenes. This procedure is now in force in several States with good effect. Members of the Legislature intending to introduce special bills asking for appropriations should be required to file with the Governor, the Comptroller and the members of the Legislature within fifteen days previous to the convening of the Legislature a copy of the bill, stating the amount of money desired and the purpose for which it is to be expended. Fifteen days after the Legislature meets, it should be the duty of the Governor to submit a budget on these special bills with a message expressing his views thereon, just as the procedure proposed in the majority report provides in reference to matters of administration.

This treatment of special appropriation bills would certainly abolish the evil of which the report of the majority complains of permitting the Governor to reward friends or punish enemies by preference in the case of special appropriation bills.

In addition to a provision preventing the passage of any appropriation bill in the closing days of the Legislature, there should

be a provision forbidding the introduction after the Legislature has convened of appropriation bills of any kind except by a report of a financial committee of either House of the Legislature.

It is further recommended that special appropriation bills be not passed without a two-thirds vote of all the members elected.

It is further recommended that all items in appropriation bills be voted upon separately. This would insure the responsibility of action and the maturity of deliberation which the majority report emphasizes.

It is further recommended that a provision compelling the absolute itemization of every appropriation exceeding the sum of \$10,000 be adopted.

Respectfully submitted,

ROBERT WAGNER.



# IN CONVENTION

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## DOCUMENT

No. 36

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### REPORT OF THE COMMITTEE ON CITIES, RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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AUGUST 5, 1915

Mr. Low, from the Committee on Cities, to which were referred the several Proposed Constitutional Amendments relating to Home Rule for cities, as follows:

- No. 719, introduced by Mr. Wagner.
- No. 187, introduced by Mr. Sanders.
- No. 774, introduced by Mr. R. B. Smith.
- No. 283, introduced by Mr. O'Brian.
- No. 535, introduced by Mr. Low.
- No. 335, introduced by Mr. Franchot.
- No. 381, introduced by Mr. Mann.
- No. 724, introduced by Mr. E. N. Smith.
- No. 568, introduced by Mr. Eisner.
- No. 629, introduced by Mr. Weed.
- No. 698, introduced by Mr. Cobb.
- No. 671, introduced by Mr. Green.
- No. 678, introduced by Mr. Franchot.
- No. 693, introduced by Mr. Berri.

No. 709, introduced by Mr. Fobes, reports that the Committee held a number of hearings on them and on the subject matter embraced in such Proposed Constitutional Amendments. It has also

been made a careful study of Article XII of the present Constitution, which article relates to the government of cities. The Committee reports by proposed amendment, entitled: "Proposed Constitutional Amendment to amend Article XII of the Constitution generally, in relation to cities and villages and their powers of self government," (Int. No. 712), which was read twice, and said Committee reports in favor of the passage of the same which report was agreed to, and said proposed amendment ordered printed and referred to the Committee of the Whole.

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Mr. Franchot presented the following:

### MINORITY REPORT

*To the Constitutional Convention:*

The undersigned disagree with the report of the majority for the reasons hereafter given.

It is obvious that the proposal of the Committee is a result of compromise. Any criticism contained in this minority report is a criticism of that result, not of the efforts of the individual members of the majority. We are forced to disagree only because the composite result seems to us to violate the fundamental principles that must govern any measure designed to meet the widespread demand from the cities of the State, and especially from the city of New York, for increased power of self-government. This demand is based upon two principal causes of complaint: (1) interference with local affairs by the Legislature; (2) inadequate power over matters of city concern, even the most minute.

The relief demanded has been grouped concisely under two heads: First, power; second, protection. A proper proposal for Home Rule should in our judgment contain the following essentials, for which we have consistently contended:

*First.*—A BROAD GRANT TO CITIES OF POWER, EXCLUSIVE IN SUBSTANCE AS WELL AS IN FORM, TO REGULATE ITS LOCAL AFFAIRS, COUPLED WITH A PROHIBITION AGAINST SPECIAL LEGISLATION BY THE STATE WITH RESPECT THERETO.



Such grant is required to cure the following evils of the present system of city government:

(a) The burdening of the Legislature with local matters in which the State is not primarily concerned.

(b) The avoidance by local officers of responsibility for city government,— colloquially termed “passing the buck”.

(c) The delay and consequent inefficiency in performing necessary city functions.

(d) The settlement of city problems away from home by legislators not responsible to the locality for such settlement and unfamiliar with such problems.

Such grant in order to cure these evils must obviously include the power of revision and amendment of charters and special city laws. Power without the machinery of government to exercise it is nil.

*Second.*— THE PRESERVATION OF STATE SOVEREIGNTY OVER CITIES THROUGH LEGISLATIVE CONTROL EXERCISED BY GENERAL LAWS.

Home Rule for cities does not imply a divesting of State control over cities. We agree that the paramount authority of the State should be retained; we disagree only as to the method of its exercise. As to the matters not within the grant of power to cities, the Legislature should, of course, have plenary power as now. As to matters within the grant it should retain power to enact general laws. The retention of the right in the Legislature to nullify local action in purely local affairs is not necessary to adequate State control. We submit that the cities of the State have justified by experience their ability to administer their local affairs free from legislative check or authority. We do not sympathize with putting their citizens in a class with the inhabitants of the Philippine Islands. As citizens of the city they have the same capacity for self-government as they possess as citizens of the State.

*Third.*— THE EXPRESSION OF THE GRANT OF POWER IN SIMPLE, DIRECT AND SPECIFIC LANGUAGE SO AS TO AVOID CONFUSION AND ENDLESS

## LITIGATION IN DEFINING STATE AND CITY POWERS, AND THE MANNER OF THEIR EXERCISE.

Governmental power to be effective must be free from doubt. Constitutional amendments in most of the other states have made a grant of power to cities in general terms similar to those employed by the majority proposal, such as "local self-government", the right to regulate "local affairs" or "municipal affairs". Judicial construction has everywhere been necessary to define the grant. A mass of conflicting decisions on important phases of city government in different states reveals that, by such general grant to cities, governmental powers are divided into three classes:

- (a) Those clearly granted to cities;
- (b) Those clearly reserved to the State; and
- (c) Those which are neither clearly granted nor reserved.

We favor a specific assignment of this last class of powers either to the city or to the State. This assignment should be by the Convention as a matter of governmental policy and not left to the uncertainty and delay of piecemeal judicial construction. We are confident that, profiting by the experience of other states, a proposal can be drafted which performs this task.

*Fourth.*—THE RIGHT TO EACH CITY AT ITS OPTION TO CONTINUE AS A LEGISLATIVE CHARTER CITY OR BECOME A HOME RULE CITY.

Home Rule should not be forced upon any community. There may be a sentiment in some cities against a change in the present system of city government. On the other hand other cities have expressed a desire for a change. Both can be satisfied. To subject the desire of either class to that of the other would be hostile to the very principle for which we contend. The grant, therefore, should be optional.

Considered in the light of these fundamental principles the proposal of the majority fails in the following particulars:

*First.*—No grant of exclusive power to cities is made except possibly as to a few minor matters which might be so held by the courts. The extent to which the control over officers and em-

ployees as defined in subdivision "a" of section 3 can be exercised by municipal action without "changing the framework" of the city government is left in doubt. If the courts hold (as we think they would) that a redistribution of powers and duties among officers or departments, or an increase or decrease in their number is a "change of framework of government," there would remain nothing exclusively in the control of the municipality except the qualifications, mode of selection, terms of office, compensation and method of removal of officers and employees. If this is the extent to which Home Rule is to be granted, the Constitution should so state simply and directly.

Furthermore, the Committee has recognized to such an extent the necessity of hedging about with restrictions the exercise of the power of amendment by local authorities as to make it very difficult to adopt any change at all. Amendments to the charter are subject to the veto of one official, the Mayor of the city, and no provision is made for overriding his disapproval of a charter change. Thus, conflicting interests of different bodies or officials on whom the power is jointly conferred will tend to defeat its exercise. This further demonstrates the impracticability of providing for the adoption of separate amendments by the local authorities of a city.

Passing to general charter revision we find that it would take approximately three years between the first proposal for a charter revision and its final enactment into law. After the draft is prepared by the charter commission, it is to be approved by the people. If approved by the people, it is submitted to the Legislature. If not disapproved by the Legislature within sixty days it takes effect as law. The Legislature may thus destroy the entire work in charter reform by its disapproval. The approval of electors of a city should in our judgment be final. It would be possible to provide that, if the charter was defective or not in accordance with State policy, it be returned to the Commission for further revision. We submit that this phase of the plan is wasteful and impracticable. Under the proposal it would be possible, however, without the necessity of a Revision Commission, for the

charter to be completely amended by concurrent action of the Mayor, the local legislative body, and the Board of Estimate, if any, and the failure of the Legislature to nullify.

After the Constitution takes effect on January 1st, 1916, no amendment to the framework of any city charter could be made until March 1st, 1917, and not even a very necessary change in a city charter could be made after the first week of any session until the following legislative year. New York city during the last session was compelled to apply immediately before adjournment for special and urgent relief in connection with the building of its subways. The existence of the Majority's proposal would prevent such emergency action. It is apparent that the nullification scheme fails to obviate any of the existing evils. The Legislature will continue to be burdened with local matters, local officers will continue to side-step responsibility, delay and consequent inefficiency will continue, and any change involving matters of importance will still be finally settled away from home.

*Second:* The language of the grant will breed hopeless doubt, uncertainty and confusion and throw into the courts the determination of the exercise of the respective powers of city and State in this respect:

(a) It fails to define the line between powers granted to a city and those reserved to the State. As to such matters as taxation, the issuance of bonds, the regulation of the operation of privately owned public utilities, the acquirement of public utilities by the city or the exercise of the power of eminent domain, acts of a given administrative officer will depend for their validity upon the validity of the grant of authority to him to act. If granted by the Legislature, claim could be made that they should have been granted by the city; if granted by the city, *vice versa*.

(b) It has injected a further element of doubt and confusion by providing two methods by which municipal action may be taken as to matters determined to be within the grant of power to cities to regulate its "property, business and local affairs." If such action involves a change in "framework of its government" it must be submitted to the Legislature for possible nullification. The classification made is illogical and unscientific.

For example, matters of important State concern, such as the recall of public officers, are left for determination by the local authorities in the use of the words "method of removal," while matters of no importance to the State must be submitted to the Legislature. Two questions, therefore, may always be raised as to any act of an official authorized by an amendment of the charter made by the local authorities: (1) Is the power to fix such provisions included in the grant to the city? and (2) can such power be validly exercised by the local legislative authorities without submission to the State Legislature?

(c) Finally, it has injected an even more serious element of doubt by providing that the Legislature may pass special city laws relating to the "*government*" of municipalities. Just how laws relating to "*government*" differ from laws relating to "property, business and local affairs" of cities no one can say. Certainly the present abuse in the introduction and passage of special laws affecting cities will continue, and the courts in order to sustain the constitutionality of such legislative acts will be forced narrowly to limit the group of subjects included within the words "property, business and local affairs". The ordinary meaning of the word "*government*" comprehends the officers to administer it and "*framework*" to support it, and thus its use hopelessly muddles the meaning of this "exclusive" grant of power and the manner in which it is to be exercised.

If you subtract from the acts relating to the "property, business and local affairs" of the city the acts relating to its "*government*", the result is zero. This seems to us the exact measure of exclusive control granted to cities by the proposed amendment. It is only fair to state that this provision of the proposal was inserted for the purpose of preserving the present suspensive veto provisions of the Constitution as to special laws affecting matters of State concern. It is our opinion that it accomplishes this purpose only at the cost of practically destroying the exclusive nature of the grant. Since the vast majority of governmental acts must affect the rights of property and of personal liberty, and involve financial responsibility on the part of the city, we may be sure that such questions as above indicated will endlessly be raised.

In sum, the proposal begins with a promise of complete Home Rule to cities, but one reaches the end only to discover that it is but a declaration of principle and that the limitations subsequently imposed effectively destroy the first impression and promise. If adopted it will tend to throw into confusion for the next ten years the exercise of power by city government throughout the State. Such a measure does not confer genuine Home Rule, does not eliminate mandatory legislation affecting cities, narrows instead of widens the present sphere of local control by municipalities.

Respectfully submitted,

JAMES A. FOLEY

EDWARD E. FRANCHOT.

CAPITOL, ALBANY, N. Y., *August 5, 1915.*

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

**No. 37**

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ADDRESSES OF WILLIAM D. GUTHRIE, D. CADY HER-  
RICK AND GEORGE W. WICKERSHAM, BEFORE THE  
COMMITTEE ON SUFFRAGE, JUNE 16, 1915

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#### REMARKS OF WILLIAM D. GUTHRIE, OF NEW YORK

*Mr. Chairman and Gentlemen of the Committee on Suffrage:*

I desire to be heard in support of so much of the proposed constitutional amendment introduced by Delegate John G. Saxe and now before you for consideration as provides for nominations by party conventions for elective State offices and for elective judicial offices, state or local. I do not, however, support the state-wide personal registration which he proposes, because I believe that this would be a mistake, as well as an unnecessary inconvenience to voters residing in the rural districts. The conditions in these districts are very different from those obtaining in the cities of the State, with their large and congested populations. In the country districts, the inspectors, watchers, challengers and public are generally acquainted with all the voters, and fraud is much more readily discovered or prevented than

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\* In accordance with the suggestion of the Chairman of the Committee, the language has been revised and amplified.

in the great cities. I am myself a voter in a rural district of Nassau County, and I am certain that annual personal registration would be an unnecessary inconvenience, if not a hardship, to a large number of the voters there, and would tend to prevent many from voting who are ready and willing to do so on election day. It seems arbitrary and senseless to require voters in the rural districts, busy about other things than politics and living at a distance from the place of registry, annually to register in person, when they have lived all their lives or for many years in the same district, are well known to nearly every resident, and fraud is practically impossible.

The great cities present very different conditions. There many do not even know the names of their next door neighbors. The inhabitants of every block change each year. Frequently a single building will be the residence of more voters than can be found in one or more square miles in the rural districts. The City of Greater New York now has a population of approximately 5,500,000 crowded into one corner of the State. This is more than one-half of the total State population. It is practically impossible to keep track of the constantly changing population in such an urban district. Experience for many years has demonstrated the necessity for annual registration in New York, as well as in the other large cities of the State. Many, however, believe that urban registration could safely be made less irksome and inconvenient to those who permanently reside in a district. If they actually voted there at the previous election, they should not be required to appear personally for registration but might be permitted to register by sending a verified notice of continuance of residence. Some such provision, if adopted, would avoid what is a needless inconvenience in the case of a large part of the electorate and would materially increase the urban vote.

The privilege of nominating elective State officers by means of delegate conventions is now denied by the Election Law; but it ought, in my opinion, to be recognized as essentially a constitutional right, which the legislature should not be at liberty to abridge. The right to assemble peaceably for the purpose of nominating candidates is certainly a political right of permanent importance and vital concern to all citizens, and it should be guaranteed by constitutional provision and not be left to constant



change or denial by the legislature. The present State constitution regulates the qualifications of voters, the registration of citizens entitled to vote, and the creation of registration and election boards. It does not contain a single provision in regard to nomination for office, even for the office of Governor, although nomination for State offices is of far greater importance to the body politic than many of the matters now regulated by constitutional provision or recited in the Bill of Rights.

The constantly increasing functions of the modern State have made the executive and administrative department the most important and powerful branch of government, and the increasing complexity of governmental machinery has rendered it absolutely essential that competent, expert and trained public officials should be chosen. Government has become an extremely difficult and scientific business, and special capacity, training and expert knowledge are more and more required in executive and administrative office. The test of a good government is more than ever its aptitude to produce good administration. If we are to have efficient and avoid wasteful administration, the greatest care must be exercised in selecting candidates. The fullest opportunity for information, investigation and discussion in regard to the qualifications and character of proposed candidates is indispensable. As Governor Throop said nearly a century ago, "There is perhaps no part of the duties of citizenship which requires more sound judgment and honesty and singleness of purpose than those relating to the nomination and election of executive and administrative officers." Good government depends in large measure **much** more on the ability and character of the men who administer it than upon laws or institutions. The maxim, constantly on the lips of so many, that a government of laws and not of men is the controlling desideratum may be grossly misleading, for the best system of laws in the hands of incompetent, inefficient and dishonest administrators will produce far worse results than an inferior system in the hands of competent, efficient and honest public officials. It may be truthfully said that the most difficult task and the highest duty that our electorate are ever called upon to perform is the selection of candidates for elective State office. In order to perform that duty, there

must be adequate and reliable means of information, full opportunity for conference, exchange of views, debate and criticism as to the capacity and character of candidates, and effective co-operation and organization in support of qualified candidates.

The selection of a Governor for the great State of New York, containing more than 10,250,000 inhabitants and comprising a political constituency larger than any other in this country or Europe, is surely a matter of vital and profound concern to the whole body politic, to every citizen, to every community, to every party, to every class, to every interest. If the short ballot be now adopted, the successful administration of the whole State government will be practically staked upon the selection of qualified candidates for Governor. All hope of governmental reform, efficiency and economy will then necessarily depend upon the statesmanship and character of one man, who will be vested with full executive and administrative powers over a population and a territory larger than some of the nations of the world. A wise and safe choice will be infinitely more essential and more difficult than in the past. Indeed, if the views of certain advocates of the short ballot prevail, we are to vest all this power in the Governor without any restraint except his sense of responsibility to the people and without an effective check upon his will or caprice until the expiration of a term of four years! We should then have to trust him absolutely. We should in truth have precisely the definition of an elective despotism and tyranny — beneficent if we are so fortunate and blessed as to secure an exceptionally able and high-minded statesman for Governor, baneful if we have an incompetent, untrained, or scheming politician or demagogue. The Governor would have it immediately within his power to become an absolute State boss through the use of an enormous and constantly increasing patronage, directly or indirectly reaching and touching every election district in State. He would be able to break party lines asunder — to promote the interest of any group or faction — to punish any adversaries — to cater to any class and sacrifice the rights of minorities — to substitute his will or caprice for the policy of his party — to permit waste and extravagance — to dictate who should be his successor. A competent candidate for

Governor who would be so well known and tested as to be safely relied on to resist this temptation would indeed be a rare phenomenon. If history teaches us that there is anything certain in human nature, if experience, which is of far more value than any mere reasoning, has again and again demonstrated any practical and eternal truth in politics, it is that unrestrained power inevitably leads sooner or later to abuse and tyranny, and that no one official, be he emperor, king, president, or governor, can safely be entrusted with any such power.

We should bear in mind that the extreme advocates of the short-ballot would make the Governor supreme and independent of the legislature, even more independent and powerful than the President is under the Constitution of the United States, by eliminating all requirement for the approval and consent of the Senate in regard to the appointment of heads of the great State departments. I sincerely hope that the Convention will not make this grave mistake. The number of State elective officers should not be reduced to less than four, namely, Governor, Lieutenant-Governor, Comptroller and Attorney-General. The Comptroller should be made an auditing officer charged with supervision as such over the various departments of the State and independent of the appointing power. The Attorney-General should be made the head of a Department of Justice and the responsible legal adviser of the Governor and of every State official. And the heads of all the great departments should be appointed by the Governor with the approval and consent of the Senate. No Governor should be given the unrestrained power to appoint or remove the heads of all departments. The requirement of the consent of the Senate is a necessary and salutary restraint upon all Governors, good and bad. It is better and safer that Governors should be compelled to submit to some obstacles than that absolute power should be vested in even the best and ablest and purest of men. The principle of a short ballot is the decrease of elective offices, but not necessarily the placing of absolute and unrestrained power in the hands of one man.

It is quite true that a State Constitution should deal only with permanent and fundamental provisions and not attempt to regulate matters of detail which can be adequately dealt with by ordinary legislation and which are in their nature such as ought

to be readily changeable. I am in full accord in this, as in other respects, with the platform which the Republican Party adopted in 1914 and on which the Republican delegates to the Constitutional Convention were elected. Subordinate and non-essential matters of mere regulation and detail ought not to be embodied in constitutions. But I venture to assert that in reason and sound policy there can be no more important, permanent or fundamental constitutional provision than one relating to the manner of selecting the highest State officers in whom all the executive and administrative powers of our State government are to be vested. This is a subject eminently fit and proper for a constitution to deal with. If this convention cannot solve the problem of establishing a sound system of nomination for elective State offices, at least in outline and cardinal features, no legislature can be expected to do so. In any event, the new Constitution should declare emphatically that the right peaceably to assemble in a political convention composed of duly elected delegates or representatives for the purpose of nominating candidates for public office, State or local, should not be abridged, as in effect it is abridged by the present Election Law. I further venture to assert that the question of nominating candidates by delegate conventions involves in its essence the perpetuation of the fundamental principle of representative government and of the republican form of government which the Founders intended to establish and to guarantee to each State of the Union.

The one great contribution which the English-speaking race has made to the science of politics has been the representative principle. It has been truly declared that every lasting advancement made in politics during the past two centuries, every lasting liberty secured for the individual, and every lasting reform towards stability in government and permanent effectiveness in administration have been by and through the representative system. The subordination of public officials to the law and their liability under the law for every illegal act sprang from the representative principle. The independence of the judiciary, that great bulwark of liberty and of the rights of the individual, has followed upon the growth and success of the representative principle. The vivifying spirit and essence of that great principle are the deter-

mination of all questions of practical government by delegates or representatives chosen by the people, who it is assumed can act more intelligently than a multitude of voters dispersed over an extensive territory and who can best discern the true interests of their country. Government under the representative principle includes not merely legislation by the chosen representatives of the people but the practical conduct of the executive and administrative branches by officials selected by the representatives of the people. Despite all attacks upon our political institutions and mistakes and maladministration, the sound common sense of thoughtful citizens still confirms the judgment of the Founders that the only safe path to better government was to follow the representative principle. This is as true today as it was when the *Federalist* was written. The direct nomination of executive or judicial officers is in utter disregard of that principle.

Now, if the function of legislating be in the long run best and most satisfactorily performed by a representative body composed of men coming from every locality and every part of a State, and if it would be unsafe to vest the law-making power in the executive branch, does it not likewise follow that the equally important function of selecting candidates for executive and judicial office and formulating party policies and platforms will be best performed by a representative body, such as our delegate conventions were, instead of being left to the mass of voters? If in legislation more intelligent and wiser action be still likely to result from a representative body than from the confusion of a multitude of voters, is it not also likely that more intelligent and wiser selection of executive officers will be made by chosen representatives as in nominating conventions than by the people at large?

It should be borne in mind that our system of republican government differs from other representative governments in the practical and effective separation of powers. In England and in France the legislators, that is the delegates or representatives elected by the people, appoint and control all executive and administrative officers and carry on the executive and administrative branches of government. There the legislative and executive powers are practically united in the same body. Under our system the legislators do not elect or appoint executive officers. It is,

therefore, essential, if the representative principle is to be maintained, that executive officers should be nominated by duly qualified representatives.

Nomination of executive officers by direct primaries will inevitably be subversive of the true spirit of the representative system, and the secrecy of the vote in the nominating primaries will ultimately be destructive of all sense of responsibility. The enrolled voter marking his ballot in secret will frequently feel no sense of responsibility or accountability to his neighbors and fellow-citizens, and will frequently fail to appreciate that the vote is a sacred trust to be exercised for the good of the community. The secrecy of the primary vote thus does a great moral mischief in destroying the sense of political responsibility and accountability. A public declaration in connection with nomination for office, involving as it does a recommendation to other voters of fitness and qualification for the particular office, is a much more effective restraint on corruption and perversion of the popular vote than any scheme of secrecy which leaves no one publicly responsible for unfit and improper nominations. In my judgment, the primary system tends to promote the nomination of self-advertisers, demagogues and wire-pullers by irresponsible minorities, groups, factions, cabals, or secret societies, generally composed of persons acting mostly in the dark and dominated or controlled by leaders who cannot be held to any accountability, however much they may prostitute the political power they exercise.

The practice of nominating candidates for public office, whether national, state, or local, by means of party conventions, caucuses, or conferences, was introduced and long existed without any statutory regulations. This practice sprang up normally and from necessity as soon as the increase in population rendered it impracticable for the voters to come together in mass or town meeting. The body of voters, who could not spend the time necessary to investigate as to the qualifications of candidates or attend political debates, and who could know little or nothing of the qualifications and character of candidates, naturally recognized that the best and safest course would be to elect delegates or representatives from each neighborhood, who, meeting delegates or representatives from other districts, could exchange views, criticize, discuss and

agree upon policies and nominations, and thus act more intelligently, advisedly and wisely than was otherwise possible.

The growth of constituencies, the multiplication of elective offices, and the neglect of their political duties by the majority of electors led to many abuses in the conduct of nominating conventions, and legislation became necessary in order to prevent frauds in connection with the conduct of primaries and conventions. In promoting this legislation, it was argued that, if citizens were assured the right to be enrolled in the party to which they desired to belong and to vote at primaries and freely to exercise their choice for delegates to conventions, they would be stimulated to take part in the primaries, and that this would result in preventing party nominations for office from being controlled by those who made politics their business or used improper or corrupt methods. Hence the primary reform measures introduced by legislation in our State in the nineties.

These measures, it is true, proved to be very disappointing to many of their promoters. This was not because the statutes were in themselves defective or inadequate, but because it was found to be impossible by mere legislative enactment to induce a majority of the electors to enroll in their parties or to take any active part or interest in politics. Although under these primary laws the nominating conventions could at any time have been readily controlled by the electorate at large, had the voters only taken the trouble to enroll and vote at the primaries, great dissatisfaction was fomented or manufactured, and a clamor arose for the total abolition of the convention and the introduction of the experiment of a direct primary system, upon the notion that this would stimulate greater political interest, enable the enrolled voters to control and elect their own candidates, bring nominations closer to the people, and curtail and ultimately destroy the power of the politicians and bosses. The new experiment was based upon the assumption that if enrolled electors could vote directly for candidates instead of for representatives to nominating conventions, they would thereby be induced to take a more active interest in politics, to overthrow the control or domination of bosses and professional politicians, and to make better selections than had ever been made before,—in a word, it was assumed, in the face of all ex-

perience to the contrary, that, if the voters had the direct power, they would perform their political duties, that better qualified and more competent and independent candidates would offer themselves or somehow would be brought to the attention of the electorate, and that nominations would then represent the will or choice of the majority in each party, and not the will of minorities or the choice of bosses. How the majority were to ascertain the qualifications of particular candidates and co-operate to secure the nomination of the best qualified were left in the air. It seemed to be thought, following the absurd and exploded doctrines of Rousseau, that the people would always want, and, by a process of political inspiration, would intuitively and instinctively select the best men for public office.

The result so far has refuted all these assumptions, hopes and promises. The people at large do not take part in the primaries and the political machines are more powerful than ever. Thus, in New York County, the Republican vote for Governor at the direct primaries of 1914 was only 23,305, out of a total enrollment of 56,108 and a vote in November of 85,478; the Democratic primary vote was only 48,673 out of a total enrollment of 132,693 and a vote in November of 90,666, and the Progressive primary vote was only 6,972 out of a total enrollment of 19,705 and a vote in November of 5,604. It will be readily perceived from these figures that a very small minority of the voters in each party took the trouble to participate in the direct primary elections, even in the case of the nomination for Governor of our State, as to which there was an exciting contest in each party. An examination of the figures throughout the whole State will show that the voters in nearly all districts took no more interest in direct primary elections for nominations than they were accustomed to take under the old convention system and that the controlling power is still being exercised by the organization, but now acting in secret and utterly irresponsible. For example, the Republican primary vote for Governor in Bronx County was 5,276 against a Republican vote of 29,865 in November, and in Richmond County the Republican primary vote for Governor was 984 against a Republican vote of 5,477 in November. It is probably correct to assume that not one-half of the Republican or Democratic voters now enroll, and that, on the average, less than one-



half of the enrolled voters take the trouble to go to the primaries even when there is a serious contest, as was the case last year for Governor. As there were then three proposed Republican candidates — Whitman, Hedges and Hinman — the result was that a one-sixth of the Republican vote in November might have been sufficient to carry the primaries, the total Republican vote for Governor having been 686,701 as against a total primary vote of 226,037 for the three candidates. Under the present direct primaries, the voters of a small portion of the State can put a candidate in nomination by petition; any number of names can be put on the official primary ballot, and a candidate may be put in nomination by a very small minority vote confined to one locality. In fact, twenty or more names can be placed by petition on the official primary ballot of any party as candidates for any elective office, and the name of the person receiving the most votes will be that of the candidate of a great party, to whose support the party will be committed and for whose conduct in office the party will be responsible, although the successful candidate may be entirely unknown to nineteen-twentieths of the voters at that particular primary. Under the primary system, in view of the small number of those participating in primaries, an insignificant percentage of the voters at a primary could nominate a candidate of whose qualifications and personal character the majority of the party were wholly ignorant, or a candidate whom an overwhelming majority would repudiate. Sulzer came very near carrying the direct primary of the Progressive party. This shows how readily the direct primary system engenders factions and irresponsibility, and how unfit it is for securing the expression of the intelligent and instructed will of the majority of any party. Moreover, there is no way of ascertaining for whom petitions are being circulated; no publicity is required even after the time for filing petitions, and the great majority of enrolled voters generally have no idea of the candidates for office on the official primary ballot until they open the official primary ballot at their polling place. The press is either unreliable or partisan, or it fails adequately to discuss the qualifications and character of the candidates.

I submit that it is absurd to claim that such a method of nominating State officers to administer government for a population

of over 10,000,000 is more likely to secure competent and trustworthy candidates or to express the real preference and the sober and intelligent judgment of the majority of the voters of each party than the method of nominating State officers by public conventions composed of delegates and representatives of the voters from each assembly or election district of the State, proceeding in the open with full opportunity for investigation, discussion and criticism.

The Direct Primary Law of 1911 (L. 1911, ch. 891) abolished all conventions in the State of New York except the State convention, and the Direct Primary Law of 1913 (L. 1913, ch. 820) abolished the State convention, striking the article on conventions and even the definition of a convention from the text of the law. Although the new law contains in section 45 a provision that nothing therein contained shall prevent a party from holding a party convention, to be constituted in such manner and under such powers in relation to formulating party platforms and policies and the transaction of business relating to the regulation of party affairs as the rules and regulations of the party provide, not inconsistent with the Election Law, it was clearly the intention of its framers that such party conventions should not deal with the most important subject which parties had theretofore dealt with, namely, the nomination of candidates for public office. Indeed, section 46, as amended in 1913, expressly provides that designations of candidates for party nominations shall be "by petition only" in the manner provided in the law.

The conventions of the two great political parties held at Saratoga last year, at which the party platforms in respect of the approaching Constitutional Convention were adopted and fifteen delegates-at-large "recommended," were wholly unofficial and unregulated by law. What was practically the nomination by the conventions of candidates for delegates-at-large was unauthorized and operated only as a mere recommendation. They had to be nominated by petition as fully as if the conventions had never convened. These conventions thus nominated delegates because they realized and every thinking man in the State appreciated that it would be absurd to leave the selection and nomination of fifteen delegates-at-large to the mass of enrolled voters who would have

no opportunity for conference and exchange of views in respect of the qualifications and character of such candidates. Some informed, responsible and representative body of men had to act, and therefore the conventions acted. They, however, refrained from considering candidates for the great office of Governor, on the theory that it would be violating the spirit and intent of the Election Law to take any action in regard to candidates for that office. That most important and vital subject was left to the hazard of petitions circulated among the enrolled voters throughout the State. There was no organization of any kind among the voters, or means of communication and exchange of views or debate, except what is known as the political organization; but it was confidently anticipated that the organization of each party would determine, or at least would have it within its power to determine, who the candidates of that party should be. Such proved to be the case. No candidate was nominated at the direct primaries for a State office unless he was supported by the regular organization or machine of his party. And that, I believe, will be the practical result of direct primaries in nine cases out of ten, and more readily and frequently and unsatisfactorily than under the old convention system.

Careful observers of the operation of the primary law last year in this State, and in other States for several years, are convinced that the result of this so-called reform has been not merely to increase the power of the regular organization or machine but to render it utterly irresponsible. The organization now acts behind closed doors and without accountability to anyone except its own inner circle. The leaders have only to whisper their orders over the telephone to the workers in each district, preserving no record, and the desired result is accomplished. If an unfit and improper nomination is made, the leaders can disclaim all responsibility and say that such is the will of the sovereign people. As the vote at the primary is secret, no one can be blamed; there is no individual or group of individuals upon whom responsibility can be fastened. If it be argued that there is actual responsibility and that everyone knows it, then I answer that this is only by admitting that, after all, the secret machine or boss is in fact responsible and still rules, and now more effectively than ever.

As has been pointed out by many able writers, the convention system in the past has been of inestimable service in this country. It afforded the highest test of a political representative institution in a democratic community and the soundest and purest application of the principle of representation or delegated authority; it operated to bind party elements firmly together, to afford full opportunity for the exchange of views and criticism and debate, for the propagation of principles, for the conciliation of factions; it inspired enthusiastic party life; it was, if honestly conducted, a thoroughly representative and deliberative body, and it lay at the foundation of party success and the maintenance and perpetuation of party principles and policies and political faith and devotion. In a word, the convention was and still is the best instrument ever devised for securing concert of choice and responsible and intelligent action by large bodies of voters belonging to the same political party and believing in the same political faith, principles, or policies.

I am not at all blind to the fact that there have been great abuses of the convention system, and that conventions have been corruptly organized or conducted. But I know of no forms of abuse or corruption which could not have been remedied by appropriate and intelligent legislation, or which could not have been prevented by action of the voters if the legislation of the past twenty-five years had been generally availed of by the majority in each party. The control of all nominations was in the hands of the majority if they had only taken the trouble to enroll and vote at primary elections for competent representatives. There is no practical remedy for abuse of power, fraud, or corruption in nominations for office but the participation in politics of all voters as a duty of citizenship. The notion that the direct primary would eliminate the professional politician and the boss has been shown to be false in every State where the scheme has been tried. Indeed, quite the contrary has been the result, and the last condition is worse than the first; for to repeat myself, manipulators, wire-pullers and political bosses now work in secret and by underground channels without any responsibility or accountability whatever, and are, nevertheless, able cynically to point to the direct primary as the expression of the people's

sovereign will—a primary which may be carried by a very small minority of the party.

I assume that all the members of the Constitutional Convention believe that the existence of political parties is essential to the success of free government and to permanence and stability of political policy, and that the perpetuation of party government is desirable for the welfare and best interests of this State. Men cannot secure results and compass their ends in politics, any more than in most other human concerns and matters requiring concerted action, except by co-operation, discipline and responsibility. The value of the service rendered to the American people by the great political parties is incalculable, and if these parties are to be disrupted and their organization and cohesiveness undermined, the result must inevitable be the most serious injury to the body politic. Whether we regard political parties as organizations of men believing in the same political faith, principles and policies and uniting to introduce or uphold those principles and policies, on the one hand, or regard parties merely as organizations to secure office and administer government, on the other hand—both of which aspects present patriotic motives—it is desirable for the permanent welfare of the people of every free country that parties should be maintained, and particularly that there should be two great responsible parties, each striving for control and ready to assume the responsibility of government and of the adoption of particular measures. A public official who belongs to a great political party and owes his preferment to that party is under a double sense of responsibility for efficiency, honesty and consistency in public office. He has a sense of responsibility and duty to the State as a whole, and he has a sense of responsibility and duty to his party, and both are moral factors of inestimable worth in securing integrity, efficiency and industry in public office.

The movement in favor of abolishing the convention system and introducing direct nominating primaries, in its real origin, sprang not from a desire to reform the existing political parties but to subvert and destroy the American system of government by political parties. The movement was later taken up by men who sincerely desired to reform party management and correct party abuses, who conscientiously despaired of reform within

the parties themselves, and who conceived and finally came to believe that betterment could only be brought about by uprooting and casting aside all the party machinery, organization and discipline which the practical experience of over a century had built up. The plea of bringing the government back to the people was catching and plausible, and it found ready response in the deeply rooted dislike of party machinery, party discipline and party constancy on the part of those who habitually neglect all attention to politics and the political duties of citizenship except during periods of popular excitement and upheaval. Although I am one of those who believe in independence in politics and in the right and duty of every citizen to vote against his party if in his judgment the public interests so require, I profoundly believe that party government and party organization and machinery are absolutely essential under our form of government.

Political parties in America have given stability to governmental policies and have created the only effective restraint upon disintegration and individual caprice or demagogism. There must be coherence in political forces; there must be concentration and direction of the political energy of communities; there must be some systematic and practical method for investigating the competency of and selecting public officials; there must be stability, harmony and co-operation in governmental policies. These can only be secured in the long run by and through permanently organized and disciplined political parties. No other means has yet been discovered by which effectively to express political opinion, to secure stability in governmental administration and policies, and to effectuate the real and permanent judgment of the people and promote their best interests.

The President of the United States some years ago, in referring to attacks upon party government in the United States, used the following striking language, which I think should be recalled:

"I know that it has been proposed by enthusiastic, but not too practical, reformers to do away with parties by some legerdemain of governmental reconstruction, accompanied and supplemented by some rehabilitation, devoutly to be wished, of the virtues least commonly controlling in fallen human nature; but it seems to me that it would be more difficult and less desirable than these amiable persons suppose to conduct a government of the many by

means of any other device than party organization, and that the great need is, not to get rid of parties, but to find and use some expedient by which they can be managed and made amenable from day to day to public opinion. Whatever their faults and abuses, party machines are absolutely necessary under our existing electoral arrangements, and are necessary chiefly for keeping the several segments of parties together. \* \* \* It is important to keep this in mind. Otherwise, when we analyze party action, we shall fall into the too common error of thinking that we are analyzing disease. As a matter of fact the whole thing is just as normal and natural as any other political development. The part that party has played in this country has been both necessary and beneficial, and if bosses and secret managers are often undesirable persons, playing their part for their own benefit or glorification rather than for the public good, they are at least the natural fruits of the tree. It has borne fruit good and bad, sweet and bitter, wholesome and corrupt, but it is native to our air and practice and can be uprooted only by an entire change of system.

I, therefore, urge upon the Constitutional Convention the restoration of nominating state conventions for elective state offices. I do so because I believe that they are the best means of maintaining political parties, of formulating their principles and policies, of purifying and disciplining their management, of stimulating political enthusiasm and disinterestedness, and of selecting and nominating fit and representative individuals as candidates for high public office. I further suggest that the nominees of any such convention should not need any further designation than the filing of a certificate by the proper convention officers. If it be felt, however, that the direct primary system should be continued for the purpose of party nominations, then it should be provided that the name of the nominee of the convention should be placed on the official primary ballot with the designation "nominated by convention." This would enable the enrolled voters to ratify or overrule the action of the convention. I am, however, convinced that this nominating primary would impose an unnecessary burden upon the electorate, and that it would be a mistake to increase the number of elections. We would then have three elections; first, of delegates to the nominating convention, second, at the official primaries, and third, at the general election. It seems to me that it should answer every purpose if adequate provision were

retained for independent nominations by petition. This would enable voters belonging to any party to place candidates in opposition to the nominees of the convention if they were dissatisfied with those nominees.

Assuming that we are to continue the system of electing judges to our highest judicial offices, that is, judges of the Court of Appeals and justices of the Supreme Court, then I submit that candidates for these very important offices should be nominated by conventions and not by direct primaries. I regard this as even more essential for judicial office than in the case of nomination for executive office.

The qualities required in a candidate for high judicial office are knowledge of the law, love of justice, high personal character, calmness, impartiality and independence. Mere popularity, or what so often is necessary to popularity, good-fellowship, is the last quality we look for in a judge. The self-seeker and self-advertiser is seldom qualified by temperament or character for judicial office. It requires the most thorough investigation as to the professional learning, career and conduct of a candidate and the most sifting exchange of views before any one can select a judicial candidate intelligently and wisely. For want of adequate means of acquiring information, the public in such large constituencies as the whole State of New York (in the case of judges of the Court of Appeals) and as the various judicial districts (in the case of justices of the Supreme Court) cannot intelligently estimate the qualifications of judicial candidates. It seems to me preposterous to argue that in parties composed of hundreds of thousands of enrolled electors dispersed throughout the State, the voters can investigate, or exchange views, or intelligently act in regard to the qualifications of lawyers who are proposed as candidates for judicial office,— almost as preposterous as if we were to select judicial candidates by lot from the names placed on the official primary list.

The test of fitness for judicial office should indisputably be higher and more technical than for other offices. That test must require special capacity and character, to be ascertained by careful investigation, exchange of views, open discussion and comparison of merits by responsible delegates or representatives charged with



that particular duty and acting in public and personally accountable for mistake, perversion, or corruption. This test can be best secured by the convention system; practically it cannot be secured at all by any system of secret direct primaries.

Reform in the selection of judges, if their selection is to be by election, lies not in schemes to reform human nature and to destroy publicity and responsibility, but in making the voters appreciate that the government is theirs, that political power is theirs, that theirs is the duty to send competent representatives to conventions, that theirs is the responsibility of electing competent men, and that they are vitally interested in having a competent, impartial and independent judiciary. Political conventions will be reliable and responsive if the people will only see to it that competent, honest and patriotic men are elected to represent them. There is no other course unless we uproot our whole system of republican government.

Ten years of experimenting with our Election Law have produced the present hodge-podge under which no election is conducted without error and without inviting a lawsuit and from which all but experts and professional politicians turn away in irritation and disgust. The net result has been to complicate our elections and make them less and less responsive to the best public opinion, and more and more subject to the control of professional politicians, wire-pullers and bosses.

In conclusion I earnestly submit that there can be no greater menace to our political institutions and to government by the people than the prevailing tendency to weaken and impair the representative principle in our governments by attempting to nominate executive and judicial officers through direct secret primaries instead of through public conventions composed of delegates or representatives duly chosen by the enrolled voters of the party and charged with the duty of selecting competent and honest candidates and directly accountable to the locality they represent for the failure to perform that duty. These delegates represent the people of the various districts of the State; they come together in public; they exchange and discuss views, or at any rate have full opportunity for debate and criticism; they vote in public for this or that candidate, and then they return to their neighbors, to those

who sent them and whom they represent, and face accountability and responsibility. How much more likely is such a proceeding to secure competent and honest candidates than the present system of leaving the voters at large to slip into dimly lighted booths and secretly place a cross on unidentifiable ballots! The convention system is sound and should be preserved; it alone will make our parties and form of government live, and in casting the representative principle aside, as is necessarily done in the direct primary system of nominations for state and judicial office, we are beginning a process which, if not checked, will end in what Lincoln called political suicide.

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#### REMARKS OF D. CADY HERRICK

THE CHAIRMAN.—Gentlemen, we will now hear from former Justice D. Cady Herrick.

JUSTICE D. CADY HERRICK.—Mr. Chairman and gentlemen: I don't know that I can add a great deal to what has been said from time to time upon the question of personal registration. I am only here because of the insistence and persistence of Mr. Saxe, who thought, perhaps, that because I had argued two or three cases in the Court of Appeals in relation to personal registration, possibly I know something about it that the rest of you do not. In that I think he is mistaken, but there are a few things that I might call your attention to which may possibly be new to some of you, possibly not.

The general subject of registration is considered at a good deal of length in the third volume of Lincoln's constitutional history of the State, which you have in your convention library, and which doubtless you resort to from time to time, so that it is needless for me to go into any discussion of this subject at any great length.

Of course, we all realize this, that it is of the greatest importance, under our form of government that our suffrage should be pure, that our elections should be honest; that only those who are honestly entitled to vote should be permitted to vote, and, for the purpose of insuring those results as far as possible our registration laws have been enacted from time to time.

The principle underlying it is undisputed. The application of it has been different in different parts of the State. In some parts of the State personal registration is required; in other parts of the State the inspectors of election can put upon the registry list for the coming election all those who voted at the last election, and add such other names as they see fit. Now, of course the opportunities that are open for fraud by any defect in the registration law can be availed of in any part of the State, whether it is in the city or whether it is in the country.

One of the learned, but simple minded, judges of the Court of Appeals, in discussing this registration question, drew a great distinction between the inhabitants of cities and the inhabitants of the country, that fraud was much more apt to prevail in the city than it was in the country; dishonest practices were more common than in the country.

Some years ago, possibly things have changed since then, but some years ago I had occasion to have some practical knowledge of politics and of the working of the election law. The only difference I could find, because human nature is the same all over, the only difference I could find between dishonest election practices in the city and in the country was that the countryman, as a rule, was more intelligent and clever than the politicians of the same grade in the cities.

And I think that will hold true today. I think, that there is more corruption outside of the big cities than in them on Election Day. My observation in the past, and what I have heard of recent years, is that the great amount of moneys that are raised to be used on Election Day are used outside the great cities, and not in. If there is any protection to be cast around the ballot box, if there are any safeguards against improper registration, it is just as much needed in one part of the State as it is in the other.

In times past when the question as to whether there should be personal registration in the country districts was being discussed it was said that it was inconvenient for many people to go personally before the boards of registration, that in many instances it would require miles of travel and that was too much to ask of them to go to the polling places first to register and then upon another day to vote.

In addition to that, it was said that the country people knew each other; knew whether they were entitled to vote or not and that the inspectors of election knew. As Mr. Guthrie said a little while ago in the course of his speech, that down in Nassau County they all knew each other, and knew whether they were entitled to vote or to have their names placed upon the register.

Since this question of personal registration was first discussed many years ago, the character of the population in the interior of this State has greatly changed. You take in many of the counties, many of the election districts, it is possibly true that formerly the people knew each other fairly well, and knew as to whether Herrick resided upon that farm and Smith upon another farm, how long he had resided there, and whether he was a citizen and whether he was not. But take it today, there are thousands and thousands of farm laborers in the State, and all you people who reside in the country know that. I have some knowledge of it, because I am interested in farm properties; they are engaged by the month, two or three or four or five or six months, and then they flit to some other place. Possibly in the same town, possibly in the same county, possibly in another part of the State, or another State, and they are here, there and all over. How are you going to keep track of them? They appear and rightfully appear, upon the registry this year and vote, and their names are carried over to the registry list next year. Then they may be far distant, who knows? They may be still entitled to vote there, although they are not on the same farm where they were employed this year. So that conditions I think in the country have largely changed from what they were years ago. We cannot go back very well to the old halcyon days when politics were pure in this State, and when they used to run the State barge up the canal with 25 or 30 people upon it, and vote at every election district as they went along, the elections continuing for three days, but we can return, I think, to some of the things that used to be done years ago.

We can enact a law which permits personal registration without the inconveniences that have been complained of so much, and which have prevented the enactment of laws for personal registration.

Personal registration is almost a necessity, if we are to have clean registry lists. When some one else is authorized to place my name upon the list and does so, and it is improperly there I cannot be punished, so that one great means of enforcing the purity of election is lost. The possible inconveniences that may result to voters by compelling them to apply in person should not be permitted to interfere with the principle that lies back of the requirement for personal registration. It seems to me that personal registration should be required all over the State but if you are not prepared to go to that extent, let me suggest this to you: That, upon the eve of every Presidential election, within a given time before that election, personal registration should be required all over the State. So that once in four years, at least, we can start with a clean bill of men who personally appeared, and have personally had their names placed upon the registry list. You cannot punish a man today because his name appears upon a registry list, and was placed there by somebody else. And you cannot punish the inspectors very well because they can say, "We always supposed that man lived out there, and was entitled to vote." You can clear that up by starting out with a clear registry list at least once in four years. It is not in line with what I was called upon to discuss, and possibly not within the purview of what you think you can embody in the Constitution, but I made this suggestion to the Legislature some years ago as one means of providing for personal registration in the country districts. There is not any man who is entitled to vote in any of these districts but what once in a while goes to the post office or to the grocery store in his election district. If at any time after the first of January, we will say, in each year, you provide that he can go before an election officer and, by making the requisite affidavits, and filing that so it is upon the record, that his name can be placed upon the registry list; and then provide also for your meetings of the full board as is required now, when names can be stricken off that are not properly on, and additions can be made of those not registered.

I don't know as I have anything further to say upon this subject. It has been discussed in the books and in our Constitutional conventions in former years, and it seems to me almost the work

of supererogation to come before you and say anything in relation to it; but I would like to add one thing in relation to the subject that Mr. Guthrie discussed, and that is upon the question of holding conventions, and the representative form of government, with all of which I fully agree.

Another thing I wish to call your attention to is this. If you will recollect in the old days when we elected delegates to assembly district conventions, and then elected delegates from the assembly district conventions to the State conventions, and then from the State conventions to the National conventions, you will remember how curiously they were graded. The ones that were elected delegates to the Assembly District conventions were a little above the average of the men who voted for them, a little better standing in the community, a little higher degree of intelligence. So when you come to elect your delegates from the Assembly District conventions to the State conventions, there was another gradation up, there was another selection of selected men; then, in turn the delegates who were elected by the State convention to the National convention were still, as a rule — I am speaking of the roll of delegates that you sent to the National convention — were a higher class of men than those you sent to the State conventions, and you got in those days, too, a class of men to go to conventions that you could not induce to go to the Assembly or to the Senate, or even to Congress because they could not spend the time.

Just as there are many here in this convention who are glad to come here, and proud to come to the convention. They are willing to give up some considerable degree of time and thought and study to it, that you could not induce to go to either branch of the Legislature. I will venture to say that there are a number of men of that type in this convention.

Selected men to pass upon the fundamental law of the State under the convention system, you had selected men to pick out State officers and judges, I agree perfectly with the gentleman who is suggesting the thought, Mr. Guthrie, that the direct primary may be workable in small districts, where people know each other or if they have no personal acquaintance with a man who is a candidate, they can inquire from their next door neighbor and ascertain from them what kind of a man he is; but under

present conditions, it is impossible to find out. If you make inquires in these days — it has always been so, in heated political campaigns, the stories that you hear about candidates from way off counties, you charge that to political gossip and political malice. He is on your ticket, and you vote for him.

You will recall that all our old writers, upon our form of government, starting out with De Toqueville, then with Jefferson, even Bryce, laid great stress upon our town meetings where people gathered together and discussed public affairs; that that was the back bone of our form of government; that it was the school of government where they learned about governmental principals, and the needs of the country, and found out incidentally about each other.

The same way, Mr. Chairman,—because you used to go to conventions in your younger days, and so did I — the gathering together, not simply of the delegates but of the people who come from all parts of the State was an immense educational value, you got to know the people who took an interest in politics, you discussed the politicians, and party platforms, you discussed the public men, and public men had an opportunity to make themselves known to the people of the State. With your direct primaries and no conventions, in 5, 10 or 15 years from now how will a man of ability in Albany or Cattaraugus or St. Lawrence, or any of those counties, become known to the people of the State? He may be well and favorably known in his own county, or perhaps in two or three surrounding counties, but unless he has been sent to Congress or sent to the Senate or some place of that sort, where he can make a name, he will not be known. In the old days that was not so. He made himself known to the people of the State by the part he took in the State conventions.

But I am going beyond the thing allotted to me to talk about, and I am going to stop.

Gentlemen, I thank you.

THE CHAIRMAN.—Would some wish to ask Judge Herrick a question?

If not, Judge, thank you very much.

Who will you call next, Mr. Saxe?

MR. SAXE.—Our fellow delegate, Mr. Wickersham.

## REMARKS OF GEORGE W. WICKERSHAM

MR. WICKERSHAM.—Mr. Chairman, I had not intended to speak this morning on the first part of the bill under consideration, but I should like to make a suggestion in passing, and that is with respect to the question of personal registration.

I have not had the privilege of listening to the discussions before the committee on this bill and, therefore, I don't know whether the suggestion has been made, but there is one perfectly conclusive method of identification for the purpose of determining the right to vote, and that is the thumb print. A registration by thumb print is so conclusive that the authorities who have studied that subject are of one accord and testify that, curious as it may seem, no two thumb prints have ever been found to bear the same tracery. So that the indisputable and conclusive method of determining the identity of an individual is found in the thumb print.

I was present a few days ago at a dinner when the police commissioner of New York was talking on that subject and he said that, a day or two before that occasion, a gentleman had come into the department and said that he was going abroad on business, and that it was essential, for certain business purposes, that he should establish the fact that he was in the city of New York on that particular day, and he asked to leave his identification thumb print in the police department so as to establish that fact conclusively and beyond any controversy, and his thumb prints were taken and recorded. The police commissioner said that there were no possible means of disputing the fact that the man who made that thumb print was at that office on that day and at that time.

Now, that would solve the problem with which I confess I have always had sympathy, i. e., the voter whose occupation carries him away from home at registration time. He may be a commercial traveler, he may be an employee of the government who is not able to come home and register, or who finds it burdensome to come and register as well as to come and vote. His identity could be established beyond any peradventure for purposes of registration by sending a registration card duly signed and identified with his thumb print.



But, Mr. Chairman, I did not come here to speak particularly on that phase of the problem before you.

Mr. Saxe's bill proposes to re-establish as a constitutional right the power of the people to assemble in convention to nominate those for whom they wish to vote at general elections.

It is curious that in the effort to prevent abuses of the rights of the people they sometimes resort to a remedy which means the destruction of their fundamental rights. For ages the traditional method which English speaking people have adopted in solving their problems of government has been to meet in assembly of one kind or another to debate the questions before them, and to come to conclusions as a result of those discussions. Previous speakers have spoken to you of the educational effect of that system of government, of the development of national character, of national characteristics which have been the outcome of this traditional method of meeting in assembly and debating, discussing, and agreeing.

It is true that that system was abused. There is no system conceivable, there is no plan of government that has ever been framed that is not susceptible of abuse. Benjamin Franklin long ago said that government, like clocks, go by the motion that men give to them. And you can never establish a scheme of government which will work automatically and which will not be susceptible of abuse. But of all the extraordinary methods of government adopted by a free people to remedy an abuse, I undertake to say none more extraordinary was ever adopted than to put into the statute law of the State a provision that any body of men constituting a political party or a group might not meet together and agree upon the name of persons for whom they propose to vote at any ensuing election. No more preposterous idea ever found expression on the statute books of a State.

Of, course, it is true that the power of the convention was at times abused. We are familiar with the story of the inner group that assembled at one of the great political conventions, and when the "slate" was handed out there was one blank left, the question was asked who was to fill that place and the answer of the boss was: "Well, we will leave that to the convention." But whose fault was it? It was all in the hands of that convention.

All that was necessary was that a majority of that convention should have lost confidence in the directing committee, and its power was gone. And every member of that committee had the right to rise in his place and express his opinions; every member of that convention. And sometimes on notable occasions slates were broken and conventions nominated their own men, and if they did not, it was because the committee represented the views of the conventions, and the members acquiesced in the direction of the Committee or Leaders.

We have embodied in our fundamental law of this State the right, which the Legislature may not invade, of the people to freely meet and petition the government, or any branch of it, for redress and grievances. Shall we not embody in it the right of the people to meet and agree upon those for whom they will vote to fill the offices of the State at any ensuing election? I would not go as far as Mr. Saxe does in this bill, in limiting the nominations to party convention, because I think that errs on that side just the same as the present law does on the side to which I object. If any respectable number of citizens desire to put in nomination by petition—

MR. SAXE.—That is not this amendment. This is only as to party nominations.

MR. WICKERSHAM.—That is one thing.

MR. J. G. SAXE.—This does not prevent independent nominations.

MR. WICKERSHAM.—Then I withdraw my comment on it, because I am speaking of the right which is the traditional right inherited by us from our forefathers, which should be jealously preserved, to meet in convention, have our delegates chosen by an appropriate method which safeguards the right of the voter within the party to choose the delegate to assemble in convention, to nominate the persons for whom they desire to vote at an ensuing election.

MR. J. G. SAXE.—I agree with you absolutely on that proposition. My bill would be unconscionable if it prevented independent nominations.

MR. WICKERSHAM.—Then we agree upon that. There is no reason I think of why that traditional method should be impaired.

It has been impaired by the Legislature of this State in response to a momentary sentiment, I believe a very mistaken sentiment, a sentiment founded upon abuse. But I think no more important work can be done by this Convention than to restore the ancient privileges of the free people of the State of New York, by removing the obstruction to their acting in that traditional method in selecting those for whom they propose to vote.

THE CHAIRMAN.—Would any of the gentlemen desire to ask any questions of Mr. Wickersham?

MR. OWEN.—Would you extend that further than is extended by Mr. Saxe's bill, to assembly districts?

MR. WICKERSHAM.—I see no reason why people of assembly districts should not have the same right as the people of the State at large have. I think the conventions of the Assembly districts have served a most useful purpose. I agree with Judge Herrick. I can go back in my recollection to the time when I served, as a very young man, as delegate to assembly district conventions. It is especially valuable in the cities. In a great city like New York, where as Mr. Guthrie says, we do not know our neighbors, I found a great helpfulness in going to the city convention where I met my neighbor, who lived around the corner of the block; I had only known him previously by the sign on his door, but he seemed to be an intelligent man when I came to meet him and I hoped that he felt that he gained something in knowing me as I knew I gained something from knowing him. And I think those associations of the delegates in the different conventions constitute a most useful aid in obliterating the sharp animosities of caste which grow up in our complex civilization, and tending to make people of all classes unite in a common interest in the good government of their community.

For that reason, among others, I am in favor of having the convention system in the small subdivisions as well as in the large ones.







# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 38

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#### REPORT OF THE COMMITTEE ON INDUSTRIAL INTERESTS AND RELATIONS, RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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AUGUST 9, 1915

Mr. Parsons, from the Committee on Industrial Interests and Relations, to which were referred the following Proposed Amendments, providing for the inclusion of occupational diseases as a subject for workmen's compensation: No. 23, introduced by Mr. Aiken; No. 383, Int. No. 376, introduced by Mr. Foley, and No. 569, Int. No. 554, introduced by Mr. Eisner, reported by Proposed Amendment entitled "Proposed constitutional amendment to amend Sections 18 and 19 of Article I of the Constitution, in regard to damages for injuries causing death, laws for the protection of the lives, health or safety of employees, and workmen's compensation for injuries or death, from accidents or occupational diseases" (Int. No. 714), which was read twice and said committee reported in favor of the passage of the same, which report was agreed to and said Proposed Amendment ordered printed and referred to the Committee of the Whole.

The Proposed Amendment adds occupational diseases to accidents as a subject of compensation to workmen and is in some

respects an amendment as to form of the present workmen's compensation provision.

Although it may be that illness from an occupational disease is a subject for compensation under the present constitutional provision for workmen's compensation, that is not certain. This will make it certain.

The theory of workmen's compensation is that injuries happen in industry, and that it is better for the employers and the employes, for the industry and for the public, that "a more just and economical system of providing compensation \* \* \* to employes" should be substituted "for wasteful and protracted damage suits, usually unjust in their results either to the employer or the employee, and sometimes to both." (Opinion of Judge Miller writing for the Court of Appeals, in *Matter of Jensen*, Document No. 19.)

Occupational diseases are as likely to happen in some lines of work as accidents in others. The same arguments apply for compensation for occupational diseases as apply for compensation for injuries for accidents.

Occupational diseases may be due either to the substances with which workmen have to do, or to the conditions under which they must do their work.

The substances which are injurious to workmen are the metals, particularly lead, certain acids and soots.

Of the conditions of work which lead to disease, the best known is the so-called "bends", the disease of the sand-hog or caisson-worker.

It would be for the Legislature to enumerate the diseases for which compensation would be given.

Your committee submits that it is better draftsmanish to amend Section 18 in the manner now proposed than in the manner in which it is now done in Section 19, where it is supposed that Section 18 is amended by the provisions that the right to compensation under a workmen's compensation law is exclusive of other rights or remedies and that the law may provide that the amount of such compensation for death shall not exceed a fixed or determinable sum.

HERBERT PARSONS,

*Chairman.*



Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Amendment introduced by Mr. Franchot (Printed No. 766, Int. No. 131), entitled "Proposed constitutional amendment to amend Article V of the Constitution, by striking therefrom the provisions of Section 8 of said article, prohibiting the creation of offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever," reported as follows:

The Committee on Industrial Interests and Relations recommends the passage of the said Proposed Constitutional Amendment, with the following amendments:

In the title in line one, after the word "amend" and before the word "article" insert "section eight,"; and after the comma, following the word "constitution", strike out the residue of the title, and insert in place thereof the following: "in order to permit the non-compulsory inspection and grading of food products."

Page one, line seven, place brackets about the word "created", which report was agreed to, and said Proposed Amendment ordered reprinted as amended and referred to the Committee of the Whole.

This section was inserted by the Constitutional Convention of 1846. Prior to that time there had been legislation which prohibited the export of certain articles unless they were first inspected. There was a fee for each inspection. The legislation was designed to give to products of New York State an advantage over products from other States through the supposed superiority of those from New York State. An army of officers grew up under it, and it became a most offensive provision. It was repealed by statute, and so strong was the feeling that this clause was inserted in the Constitution. It, of course, was intended to prevent officers for the *compulsory* weighing, gauging, measuring, culling or inspecting of merchandise, etc. The word "compulsory," however, was not inserted.

It is the opinion of the Attorney-General's office that the presence of the section in its present form might tend to defeat desirable legislation in order to protect producers and consumers of various food products. If, for instance in the large centers to which products are sent, it is desirable to establish a public market, in order to deal with the cost of living, to eliminate some of the

middlemen, and for that purpose, to have goods brought to that market, classified according to standards which the market may establish for the convenience of both sellers and producers alike, it is doubtful whether, under this provision, the State could pay any officers who were selected to do such inspecting and standardizing. Under such an arrangement, it would not be compulsory upon anyone to submit their products to inspection, but unless they did so, they could not sell them at the market. We could not, for instance, under this section as it now reads, adopt the system which prevails in Illinois, where there are State officials with some such powers as these, and where the Chicago Board of Trade allows nothing to be sold upon it except under the standards and classifications determined by the State officials mentioned. Under the Illinois system, the situation there is said to be far better than the situation which, under the present provision of the Constitution, is possible here. This will merely make possible that system and will continue the constitutional provision with respect to food products in the form in which it was really intended to be, as adopted in 1846, where it was aimed to eliminate *compulsory* inspection, etc.

At a time when the problem of reducing the high cost of living is so acute over the entire country, it is in the last degree advisable, in the judgment of this committee, that the Legislature should be left free to meet that problem in such manner as it sees fit after a full and complete investigation of conditions. It is apparent from the hearings had before this committee that one of the most likely remediable measures to be adopted will be the establishment of local municipal markets under governmental control, and it was clearly demonstrated that no such market could be useful without the ability to fix grades and qualities of food products dealt in thereon. Section 8 of Article V of the Constitution in its present form stands directly in the way of any provision for this useful function.

HERBERT PARSONS,

*Chairman.*

Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Amendment introduced

by Mr. A. E. Smith (No. 194, Int. No. 193), entitled " Proposed constitutional amendment to amend article 3 of the Constitution in relation to minimum wages," reported in favor of the passage of the same, with the following amendments :

In the title, strike out the word " minimum " and insert in lieu thereof the word " living ", and after the word " wages ", insert the words " to be paid to women and children ".

In line 5, strike out the words " minimum or ".

In line 6, strike out the word " or ", and insert in lieu thereof the word " and ".

which report was agreed to, and said Proposed Amendment ordered reprinted as amended and referred to the Committee of the Whole.

The number of poor persons in this State who are dependent upon public charity is markedly on the increase. In the year ending September 30, 1913, the number of persons supported in county, city and town almshouse institutions, or receiving temporary relief in the several counties of the State, was 403,991, and the expense therefor was \$8,401,318.43. This enormous expense was incurred in pursuance of our historic policy of having the State responsible for the poor, a policy which is now set forth in the language of Section 2 of the Poor Law, that " a ' poor person ' is one unable to maintain himself, and such person shall be maintained by the town, city, county or State \* \* \*." The number of such persons who were objects of such public charity had increased 24 per cent. in number in the three years from 1910 to 1913, and the expense had increased 37 per cent. In the twenty years from 1890 to 1910, the number increased from 175,341 to 325,653, an increase of 85 per cent., and the expense increased from \$3,319,865.25 to \$6,096,958.95, an increase of 83 per cent., although the population of the State in the same period increased only 52 per cent. Legislation which will require that living wages be paid in industry is one method of checking and reversing this increase in number and expense.

To what extent in this State do employees receive less than a living wage, by which is meant a wage sufficient to supply the necessary cost of healthy living? We do not know. We do know, however, that there are many thousands. The State Factory In-

vestigating Commission, which was authorized by the Legislature after the Triangle Shirtwaist Factory fire in New York city, studied the cost of living, and also gathered the wage schedules of 105,000 employees in certain trades. The conclusion reached by its investigators was that a living wage in New York city for a woman living independently should be \$9 a week. Out of 45,000 department store employees receiving \$50 a week or less, there were 13,000 women eighteen years of age or over who earned less than \$9 a week. Fifty-three per cent. of all female employees of eighteen years of age or over in stock and sales received less than \$9. Four thousand women of eighteen years and over employed in industrial lines were getting less than \$8 a week, and averaged \$5.79 a week. In half of the wage-earners' families that were investigated there was no male wage-earner. One-half of the people discovered in the investigation received less than enough to live properly and independently.

The following is a budget of the average expenditures for a girl who received \$8 a week:

Average for clothes.....	\$1 50
Room rent.....	2 00
7 breakfasts and 7 dinners.....	2 00
6 lunches.....	90
Carfares for 6 days.....	60
Allowance for insurance and medical care.....	25
Dues, reading and amusement.....	50
Savings.....	25
	<hr/>
	\$8 00

Department store women are required to be neat in their appearance, so that the item of clothes is an important one. It will be noticed that the lunches average 15 cents each, and that if each breakfast averages 10 cents, each, there is not quite 20 cents for each dinner.

Insufficient wages mean that food is cut down below the level of healthy subsistence. This is illustrated by studies of family budgets. In a study of 200 families made some years ago in the Old Greenwich village section of New York city, it was found that in most families about a dollar a week for each person in the family not an infant was spent for food, except in the very poor

or more prosperous families, that in the week in which the rent was paid, the allowance for food was frequently cut down, and that if a new pair of shoes or a new coat was necessary for one of the children, the food was apt to suffer. The 23 families whose incomes were less than \$600 a year and who were independent of organized charity "were underfed, poorly clad and usually wretchedly housed." Most families lived from week to week. One hundred and fifty-three out of the 200 families had a deficit or just came out even at the end of the year. A family of this character is therefore "constantly on the verge of dependence — if not on the charity society — then on their relatives and friends, in case of any long unemployment or industrial depression."

Insufficient food means a weakened body, a less efficient worker and a greater predisposition to illness. Workers receiving such small wages have nothing to spend by way of preventing illness, and when it comes, nothing to spend to cure it. Less than living wages are therefore breeders of illness and dependency.

It cannot be definitely said that low wages lead to immorality. It is obvious, however, and investigation has confirmed it, that the temptations are less easily resisted when wages are insufficient.

The Factory Investigating Commission's investigation also showed that to raise 5,000 women in the large department stores who were receiving less than \$9 a week to the \$9 standard would mean an addition of only one-third of 1 per cent. in the selling price, and that to raise the mature women in the neighborhood stores to a wage of \$9 a week and girls under eighteen to a wage of \$6 a week, would only necessitate pricing articles at a full dollar instead of 99 cents.

Wages vary greatly. One department store paid 86 per cent. of its saleswomen \$10 or more, and another paid 86 per cent. less than \$10. There is a lack of standard of women's wages.

In principle, the living wage is not new. We apply it in government. Neither the Nation, the State nor any subdivision of the State offers employment to persons at the lowest wages they will take,— at wages insufficient for healthy subsistence. On the contrary, they fix wages which they believe will be fair. It would seem a stupid as well as inhumane policy for the State to employ

labor at less than living wages, as it would mean that the laborers were likely later to become dependent upon the State. The living wage is applied by many of our largest corporations. They do not seek to obtain labor at the lowest wages possible. They fix a not less than living wage for all employees. The more enlightened employers find that higher wages mean greater production. One effect of the policy of allowing only living wages to be paid would be to compel the employer in his competition to strive to get the more efficient help and to employ only that which is efficient.

We have sought in the interest of the general welfare to protect employees by requiring that their work be carried on under sanitary conditions and that machinery be so guarded as to prevent accidents. We have prevented all competition among employers along lines not up to such standards. The living wage is designed to aid the general welfare by requiring that workers shall receive wages sufficient for healthy subsistence and to exclude from the realm of competition between employers, competition for labor at a less cost than what is a living wage to labor.

How does it serve the general welfare that people should be employed at less than living wages? What is to be gained by allowing competition for labor to be paid less than a living wage? If it is against public policy, as we declare that it is, to allow an employer to engage a woman to work excessive hours or under insanitary conditions, is it not equally against public policy to permit him to engage her for wages insufficient to provide the food and shelter without which she cannot continue in health? From the point of view of the employer one way of increasing his expenses is the same as another, while to those concerned with the public welfare, the permanent efficiency of industry, and the maintenance of national health, adequate food is at least as important as reasonable hours or sanitary conditions of employment.

Most employers desire to pay a living wage. No living wage legislation would be necessary to bring the small employer to pay living wages to the few people whom he employs and therefore well knows. His human interest in them assures them of living wages. In large industries, however, the employer knows little about his employees. His relation is not human; it is impersonal.

When it is brought to his attention that he is not paying a living wage, in most cases he proceeds to pay it. Many employers have welcomed the suggestions of the Factory Investigating Commission in this respect. There are, however, some employers who will pay the lowest wages they can. They must be dealt with by law, just as in connection with sanitary and accident-preventing regulations in factories, they have had to be dealt with by law.

The minimum wage is an Anglo-Saxon development. It started in New Zealand in 1894, and then was taken up by the various states of the Australian Commonwealth. In 1909 it was enacted in Great Britain, first being applied to only the ready-made and wholesale tailoring, cardboard-box making, chain making, and lace finishing trades. In America it has, in very recent years, been enacted in California, Colorado, Massachusetts, Minnesota, Nebraska, Oregon, Utah, Washington and Wisconsin. Except in Utah, where the statute fixes the amount of the wages, the legislation usually provides that a commission or board, such as the Industrial Commission which now exists by statute in this State, shall ascertain, sometimes with the assistance of an advisory board made up of employers and employees in the industry, the minimum wages needed to supply the necessary cost of proper living, and establishes them as the minimum wages to be paid, making it a violation of law for an employer to pay less than such wages. In all except Wisconsin such legislation is only for women and children. There is generally a provision in the law that a license may be issued to a woman physically defective by age or otherwise, and authorizing her employment for a special minimum wage less than the regular minimum wage.

In the application of minimum or living wage legislation, it is recognized that the cost of living varies according to localities. It is also recognized that many people who enter industry are at first only apprentices, and that they are not to be treated as ordinary employees.

One of the arguments made against living wage legislation is that it drives people out of employment. If such legislation has the effect on industry of confining those employed in it to those who are efficient, it has, in that respect also rendered a service.

Experience has shown, however, that the number who are driven out of employment is small. Sometimes they are cared for by the system of special licenses mentioned above. They are, moreover, the inefficient, and are those most likely to become dependents of the State. From the point of view of the taxpayer, it is cheaper that these few inefficient be driven out of employment, if the many others who, because of insufficient wages would be in danger of becoming dependents, are through the payment to them of living wages prevented from becoming dependents.

The machinery necessary to carry out living wage legislation places some burden upon industry in that it will take some of its time and attention. We are told that the living wage plan "interferes with business, and business is having a hard time." But that is no argument against the principle. It may appeal to our sympathies, but it should not be allowed to prevail. It is a century old as an argument, and if admitted to be conclusive, none of the beneficent labor legislation that has been enacted during the past century would ever have been enacted. The burden placed upon our public service corporations by rate legislation is considerable, as is the burden placed upon manufacture through the requirements of our labor laws in regard to sanitary conditions and protection against machinery. But in each case the good has far outweighed the burden.

If the Supreme Court of the United States shall hold that the minimum wage law of Oregon, the constitutionality of which has been argued before it, is not in violation of the provisions of the Federal Constitution, it may be that without this direct provision our own Court of Appeals would hold that such legislation is within the police power and not in violation of similar provisions of the State constitution, and there is encouragement for this view in the language used by Judge Miller in his recent opinion in the Jensen case. The Court of Appeals in the Ives case, however, flatly disagreed with the then recent definition of the police power given by the Supreme Court of the United States, and for that reason the Constitution should give to the Legislature the power to enact minimum wage legislation.

HERBERT PARSONS,

*Chairman.*



Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Amendment introduced by Mr. Parsons (No. 417, Int. No. 405), entitled "Proposed constitutional amendment to amend Section 19 of Article I of the Constitution, in relation to legislation affecting employees," reported as follows:

The Committee on Industrial Interests and Relations recommends the passage of the same without amendment.

which report was agreed to and said proposed amendment referred to the Committee of the Whole.

While the recent opinion of the Court of Appeals in the *Mutter of Jensen*, Document No. 19, in which the present Workmen's Compensation Law is held not to be in violation of the Federal Constitution, may be considered to indicate that it is the intention of that court, in interpreting the police power and in construing due process clauses, to follow the lead of the Supreme Court of the United States, it is eminently desirable that this uniformity of decision should be made certain. This object is accomplished by the amendment. The legislation to which it refers would have to pass the test only of one due process clause, namely, that of the Federal Constitution, instead of two, which though identical in language have been construed differently by the Supreme Court of the United States and our own Court of Appeals. In the case of *Ives v. South Buffalo R. R. Co.*, 201 N. Y. 271, in which the former Workmen's Compensation Law was declared unconstitutional as in violation of Section 6 of Article I of the State Constitution, our Court of Appeals indicated that it differed in its construction of the due process language in the State Constitution and of its converse, the extent of the police power, from that of the Supreme Court of the United States in the case of *Noble State Bank v. Haskell*, 219 U. S. 104.

An attempt to lead to uniformity of constitutional decision was made by the Congress of the United States in the passage of the act of March 3, 1911, which amended section 237 of the Federal Judiciary Act so as to provide that the Supreme Court might review a decision of a state court which had held that a state statute was in violation of the Constitution of the

United States. But unless this amendment is adopted the result of this extended right of appeal may be to make, more glaring the difference of construction given by the two courts. Let us suppose, for instance, that the Ives case had come after this right of appeal had been granted and had been taken to the Supreme Court of the United States, and that that Court had declared that it was not in violation of the due process clause of the Fourteenth Amendment of the Federal Constitution, although the Court of Appeals of this state had declared that it was in violation of the due process clause, identical in language, of the State Constitution. We would then be in the anomalous position of having a law of great interest and moment held constitutional by the greatest court in the country but held unconstitutional by the greatest court in the state, in construing identical constitutional language. The State Court's opinion being supreme as to the State Constitution, the statute would thereby be made inoperative. Such a situation is to be avoided so far as this legislation is concerned, it would place New York in the same position as New Jersey and Wisconsin, neither of which has a due process clause in its State Constitution.

HERBERT PARSONS,  
*Chairman.*

# STATE OF NEW YORK

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# IN CONVENTION

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## DOCUMENT

No. 39

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### MINORITY REPORT ON PROPOSED CONSTITUTIONAL AMENDMENT No. 417 (Int. No. 405)

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AUGUST 9, 1915

Mr. Leggett presented the following minority report on "Proposed constitutional amendment to amend Section 19 of Article I of the Constitution, in relation to legislation affecting employees." (No. 417, Int. No. 405.)

The minority of the committee opposes the approval of this proposal for the following reasons:

That it would make the Constitution of New York unique among American Constitutions, because in effect it would contain no restriction whatever on the power of the Legislature.

The constitutionality of no enactment could be questioned in the courts unless the Legislature forgot to declare that it was "necessary for the protection of the lives, health, safety, morals or welfare of employees."

J. C. LEGGETT.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

**No. 40**

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#### REPORT OF THE COMMITTEE ON GOVERNOR AND OTHER STATE OFFICERS, RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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AUGUST 11, 1915

Mr. Tanner from the committee on Governor and Other State Officers to which was referred proposed amendments as follows: Int. No. 85, Pr. No. 85, by Mr. E. N. Smith; Int. No. 110, Pr. No. 110, by Mr. Brookes; Int. No. 111, Pr. No. 111, by Mr. R. B. Smith; Int. No. 125, Pr. No. 125, by Mr. C. Nicoll; Int. No. 172, Pr. No. 172, by Mr. Bernstein; Int. No. 179, Pr. No. 179, by Mr. L. M. Martin; Int. No. 186, Pr. No. 186, by Mr. Lincoln; Int. No. 222, Pr. No. 224, by Mr. Pelletreau; Int. No. 293, Pr. No. 296, by Mr. Leggett; Int. No. 300, Pr. No. 304, by Mr. Dunlap; Int. No. 404, Pr. No. 416, by Mr. Latson; Int. No. 418, Pr. No. 430, by Mr. Wadsworth; Int. No. 436, Pr. No. 448, by Mr. R. B. Smith; Int. No. 472, Pr. No. 484, by Mr. Deyo; Int. No. 498, Pr. No. 510, by Mr. J. G. Saxe; Int. No. 540, Pr. No. 555, by Mr. J. G. Saxe; Int. No. 552, Pr. No. 567, by Mr. Eisner; Int. No. 635, Pr. No. 651, by Mr. Donnelly; Int. No. 668, Pr. No. 684, by Mr. Brackett; Int. No. 694, Pr. No. 727,

by Mr. J. G. Saxe, reported by proposed constitutional amendment entitled "Proposed constitutional amendment repealing sections 1, 2, 3, 4, 6 and 7 of article five and creating a new article five in relation to state officers." (Int. No. 716), which was read twice and said committee reports in favor of the passage of the same.

Which report was agreed to and said proposed amendment ordered printed and referred to the committee of the whole.

Mr. Tanner from the committee on Governor and other state officers presented the following majority report.

Mr. Tanner, for the Committee on Governor and Other State Officers, makes the following report to the Convention:

The Governor and Other State Officers whose powers and duties have been referred to your committee for consideration are provided for in Articles IV, V and VIII of the Constitution, and in a great number and variety of statutes. There were 152 departments, bureaus, boards and commissions which, on the first day of January, 1915, constituted the executive branch of the State government. In numerous instances these overlap in jurisdiction, and conflict in operation. This evil has been apparent to the public in the multiplicity of inspections and conflicting orders coming from unrelated and independent bureaus.

Except in some specific matters and to a partial extent, these agencies are independent of each other and not subject to the inspection, supervision or control of any superior authority, unless it be the Governor himself. It is manifestly impossible for the Governor personally to exercise direct supervision over such a multitude of agencies. They are, therefore, practically free from effective control. They cannot practically be held accountable for what they do, or fail to do.

#### THE PURPOSE OF THE COMMITTEE

The purpose of the committee has been to provide for a systematic plan of departmental organization; to simplify and co-ordinate the administrative machinery of the State; to subject every executive agency of the State government to practical accountability and to fix responsibility for the execution of the laws.

Your committee has conferred with the other committees having in charge related subjects and has sought to conform the

article now reported to the several plans outlined in their reports.

The present Constitution, article IV, section 4, provides that the Governor "shall take care that the laws are faithfully executed." It is the opinion of your committee that the executive machinery placed at his disposal is not well suited to the purpose, and makes economy and efficiency in the administration of such laws practically impossible.

#### THE CRITICISM IS OF SYSTEMS, NOT INDIVIDUALS

The changes recommended in this report are not a criticism of any individual either in this or in previous administrations. The criticism is of the defective system under which our public servants have labored at great disadvantage to render public service. The machinery of government is built wrongly and no one under present conditions can make it work well. It is this condition to which President Taft referred when he told the committee that a study of the government of the State of New York aroused in him feelings "of profound admiration for the political adaptability of the people to make a machine work that nobody who had any real business sense would think would work under any conditions."

#### REMEDY MUST BE PROVIDED BY THIS CONVENTION

The situation described cannot be cured by the Legislature alone. It must be provided for by constitutional enactment. The existing plan of State government is not a creation by design, but is a growth by accretion. In 1894, when the last Constitutional Convention sat, the number of departments, boards, commissions, etc., was 39. Since that time, there has been addition after addition until now the number in the executive branch is 152, an increase of 113 or nearly four-fold. Within the same period, the cost of government, exclusive of interest on the canal and highway debts and of the free school fund, has increased as follows:

1895 . . . . .	\$12,066,646 97
1900 . . . . .	17,696,398 85
1905 . . . . .	24,511,946 95
1910 . . . . .	34,791,576 01
1914 . . . . .	42,408,488 24

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The growth of expenditures from 1895 to 1914 is approximately from \$12,000,000 to \$42,000,000, whereas the growth in population during the same period was from 6,513,343 to 9,899,761, and the per capita cost of State government rose from \$2.47 in 1895 to \$5.41 in 1914, an increase of 235 per cent. during the last nineteen years, whereas the population of the State in the same period has only gained 53 per cent.

While due allowance must be made for this increase because of the extended activities of the government and a bad financial system, yet it is the opinion of your committee that this unprecedented growth is due in great part to the faulty and wasteful system, or lack of system herein referred to.

Your committee has, therefore, addressed itself to the task of formulating a plan which would check the constant rise in the burdens of taxation and enable the people to exercise a more direct control over their public servants. The plan proposed does not change the functions of the State, but is confined to the methods of performing existing functions. To phrase it more simply, your committee is not trying to determine *what* the State should do, but to find a better way to do it.

#### FAILURE OF PRESENT SYSTEM RECOGNIZED BY BOTH POLITICAL PARTIES

This failure in the present system has been recognized by both of the great political parties of the State in clear and explicit terms. In 1914 the Republican State platform, framed especially with a view to this revision of the Constitution, declared:

The inefficiency, extravagance and corruption which have characterized our state government reveal the necessity of locating the responsibility for misgovernment in such a way that the people of the state can more certainly hold known officers to accountability and condemnation. In this way the people can best secure the satisfactory accomplishment of their purposes and due responsibility for wrong doing. We recommend a substantial reduction in the number of elective officials by the application of the principles of the short ballot to the executive offices of the state. To prevent multiplication of offices we recommend that the various administrative functions of the state, so far as practicable, be vested in a limited number of departments. The present duplication of effort and expense in the public institutions of the state should be remedied by the establishment of a simpler and better organized system.



With the same realization of the necessity for action, the Democratic platform of 1914 declared:

There should be no divided authority or responsibility in executing and administering the laws of the state. The time has come to give the people control of their executive government. The responsibility should be centered in the governor. He should have the absolute power of removal. The various boards and commissions should be made subject to the control of the governor. General rules should be prescribed by the Constitution on these subjects, and for the organization of new departments. The people should be able to know whom to hold responsible for any failure in the execution, or mal-administration, of their laws, and not have their attention divided and distracted by a number of elective, executive and administrative officials, either elective or appointive, but be enabled to concentrate their attentions, and to devote their energies to the election or defeat of fewer officials; therefore, to center responsibility for executive and administrative action, and to give full force and effect to the power of the people, we favor an amendment to the Constitution providing for the election only of the governor, lieutenant-governor, comptroller, and attorney-general and we pledge ourselves to the preparation and submission of a scheme of constitutional amendment which shall concentrate responsibility for executive management, shall simplify the administrative system of the state and shall provide general rules of departmental organization for the future guidance of the Legislature.

#### LEGISLATURE MUST ACT WITHIN CONSTITUTIONAL PLAN PROVIDED

Clearly the demand for this change is not a partisan one. The problem has been approached in this spirit, and we herewith submit a grouping of all the related administrative functions of the State in a systematic plan of co-ordinated departments. All that your Committee has attempted to do is to provide on broad lines a departmental system, leaving the important task of the internal organization of such departments to the Legislature, giving to it power to make readjustments therein whenever necessary and prohibiting it from creating any office or functions of State government not assigned to one of these departments. This will prevent the further growth of unrelated and conflicting agencies which has characterized the period since the adoption of the Constitution of 1894 and give to the general departments of executive government a stability beyond legislative disturbance.

The present Constitution contains an enumeration of elective State officers, but presents no plan of general organization. The State Superintendent of Public Works and the State Superintendent of Prisons are made constitutional officers, but the Commissioner of Highways, the Superintendent of Insurance, the Superintendent of Banks, and many others of equal importance, are statutory only, and subject to change by the Legislature. There is no logical reason why some departments should be included in the Constitution and others whose functions are often similar in nature, and of equal or greater importance, left out. The unscientific arrangement in such departments as are mentioned in the Constitution, is illustrated by the present Article V, section 3, which provides that the Superintendent of Public Works shall hold office until the end of the term of the Governor by whom he was appointed, that is for two years, but provides that the deputies named by the Superintendent of Public Works shall hold their office for three years.

#### NATURAL GROUPING OF DEPARTMENTS

The plan proposed by your committee divides itself naturally into three groups, according to the general functions of the officers or departments described.

First, the Attorney-General, who is the law officer of the State and the adviser of the departments, and the Comptroller, who under the proposed system is a State wide auditing officer, are continued as elective officers. Members of the committee who favor the appointment of these officers have yielded their views to others who prefer their election. The basis of this compromise is to be found in the peculiar relation which these two officers hold to the people of the State as a whole.

Second, the agencies of government which, from the character of their jurisdiction and authority, cannot be considered as purely executive arms of the State government. These boards or commissions possess, to a large degree, judicial or legislative functions, **and make rules and regulations** under delegated authority from the Legislature. To this class belong the Department of Education and its Board of Regents, the Public Service, the Conservation, and the Civil Service Commissions. These sustain exceptional relations to the Governor. They serve for longer terms, and their removal has been made more difficult than that of the heads of purely executive departments.

Third, the departments which are strictly executive in nature. These are the arms of the Governor by which he takes "care that the laws are faithfully executed," and for their acts he is held accountable. There was, accordingly, a strong sentiment in the committee in favor of the independent appointment and removal of these officers by the Governor. But a compromise was finally reached by providing that the appointments should be subject to the advice and consent of the Senate. The heads of departments thus appointed constitute the group of advisers on whom the Governor must depend for carrying out the policies of his administration. His authority over them should be unquestionable and direct.

#### FEW CHANGES IN EXISTING DEPARTMENTS

Of the nine civil executive departments referred to in section 7 of this article, little change has been proposed in the functions of six; to wit, departments of State, Health, Agriculture, Banking, Insurance, Labor and Industry, excepting that certain miscellaneous duties of collecting public revenues now performed by some of them have been transferred to the Department of Taxation and Finance, including the collection of the automobile tax now made by the Secretary of State; the tax on foreign insurance companies now collected by the Superintendent of Insurance; the charges on foreign bankers now collected by the Superintendent of Banks.

The Department of Public Works will include the functions of the State Engineer and Surveyor, the State Superintendent of Public Works, the State Commissioner of Highways, the State Department of Public Buildings and the State Architect. This consolidation was recommended by the State Engineer and by the Superintendent of Public Works and by virtually the unanimous testimony of engineers, both within and without the State service.

By the proposed Department of Charities and Corrections, the Committee has sought to retain the advantages of the present system relating to the care of the insane, by continuing the provisions of the present Constitution covering this subject. The State Board of Charities, the State Commission in Lunacy, and the State Commission of Prisons have been continued with their functions unimpaired, but it is the opinion of your Committee that better co-operation and greater accountability will be secured among the various departments and institutions having care of

the wards of the State by the provision for a Secretary of Charities and Corrections who shall have power of inspection and supervision over these institutions.

The Department of Taxation and Finance under the proposed plan will be devoted to the collection and care of public revenues. It is intended to be the financial arm of the state government. The Governor must look to the head of this department as his adviser on all matters of state finance.

The Comptroller, under the proposed plan, will represent the people of the State, directly commissioned by them to keep a watch upon the acts of all the executive departments to see to it that the revenues of the State are expended in accordance with the intent of the Legislature; that all the safeguards and limitations prescribed by law are observed; and it will be his duty to call the attention of the representatives of the people in the Legislature to any wrongdoing upon the part of the executive officers, and if the wrongdoing is of such a character as to call for legal redress, it will be his duty to call it to the attention of the attorney-general. The vouchers representing the expenditures of the revenue of the State will come under his scrutiny and be subject to his action for the protection of the public treasury.

It is manifest that the officer who performs these functions should not himself be an executive officer collecting and expending funds of the State. The two functions of the actor in financial transactions and the critic of the actor must be separated if there is to be efficient criticism. For this reason the proper functions of the Comptroller have been concentrated in the one officer, who, because of the nature of these particular functions, is to be elected by the people so that he may be independent of the whole executive government of which he is the critic and upon which he is the check, while the active functions of collecting and disbursing the moneys of the State have been vested in another officer who is called the treasurer as the head of the Department of Taxation and Finance.

In the extensive hearings before the committee, no one questioned the serious evils which have resulted from the defective organization of government in this State and no one suggested any general plan of improvement containing other general principles than those incorporated in this report. In the opinion of your committee the Convention must adopt such a plan as this in substance or must fail to give relief from the grave and unquestioned evils at which this plan is aimed.

This is a complete revision of Article V excepting sections 5, 8 and 9 which are subject to a supplemental report after other committees dealing with these subjects have reported to the Convention.

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### MINORITY REPORT

Mr. C. Nicoll presented the following minority report.

With those recommendations of the Committee on Governor and other State officers which provide for the classification of the civil activities of the State into broad divisions, each under the control of an administrative head appointed by the Governor, I am in hearty accord.

I dissent from the proposal only so far as the Committee has seen fit to depart from its excellent plan in proposing that two of the most important divisions of government, that of audit and justice, each headed by a single officer, and each peculiarly a part of the executive department and particularly charged with the execution of the laws, be omitted from the general arrangement. These offices, the Committee has provided, shall be selected in another manner, to wit: by popular election.

Neither the offices of the attorney-general of the State nor that of the comptroller determine any policy of government in which the people at large take interest. Important as these officers now are and more important as they will be if the proposal of the Committee is adopted, the sole interest the people have in them, as well as in the other branches of the executive department, is simply that they be honestly and efficiently administered.

The attorney-general should be appointed by and responsible to the Governor because an incident of the executive's duties is the enforcement of public policies by litigation. In fulfilling the mandate that the Governor shall take care "that the laws are faithfully executed," it is vitally necessary for him to have at his command the full legal force of the State. It is absurd to give the Governor full power to enforce the statutes of the State by means of the militia and begrudge him power to enforce the laws by the more peaceful process of litigation.

Further, an appointive attorney-general being in full confidence of the administration would act as legal adviser for other executive departments and furnish them expert legal assistance in the same manner as it is proposed that the Department of Public Works will supply expert engineering assistance to other departments. His retention as an elective official means, on the contrary, the creation of another legal bureau or series of legal bureaus to provide counsel for the Governor and his department heads.

The comptroller should be appointed because any other method of selection is a serious impairment of the Governor's responsibility to see that the moneys of the State are expended legally and in the manner and for the purposes, contemplated by the Legislature. The chance that the Governor and the comptroller might conspire together to defraud the State is remote and is fully guarded against, by the remedies of impeachment provided elsewhere in the Article and in the Constitution. Through a comptroller appointed by and responsible to the Governor, an audit would be provided, not independent of the Governor, of course, but which would be free of outside political pressure and, what is possibly more important, free of personal political ambitions. The election of a comptroller by popular vote to watch the executive and legislature is presenting him with a letter of marque to prey on other departments and is the creation of an official whose success will be measured in the public mind by his muck-raking ability.

A Legislature to enact and an executive to enforce the laws are foundation stones of our government. Fear that by giving the executive full power to enforce the law he may do wrong is fear that the people have not intelligence or capacity to select their Governor or their Legislature, which may remove him. It is fear of popular rule; of the hazard of democracy. Rule by the people can be better secured by giving to them simple means for exercising control through a single efficient and harmonious executive department, rather than by dividing that department in a manner that will destroy its harmony for fear that the people may sometimes be unfortunate in their choice.

Respectfully submitted,

COURTLANDT NICOLL.

## MINORITY REPORT

Mr. Baldwin presented the following minority report:

I dissent from this so-called "Short-Ballot Bill." However admirable the purposes the means suggested are fallacious. The cure is worse than the ill. Centralized government might tend to economy, but it would inevitably bring discontent, and discontent destroys the mental poise of democracy. Popular government may not work for economy, but that is not sufficient reason for its destruction.

If the Convention believe that oligarchy is better than democracy, let us be frank and tell the truth, and not deceive the people with a sugar-coated catch phrase. This plan would enthrone one man for four years. It would give him direct control of an army of more than 25,000 officers and employees. During his term he would direct State expenditures of more than \$250,000,000. It would give such power as would have gladdened the heart of Alexander, the tyrant of Phæræ, or satiated the cupidity of that modern dictator, Castro of Venezuela.

The average voter does not understand the meaning of the "Short Ballot." It is a cunning phrase. As applied to the needs of the people, it is not suggestive of its true significance. It does not satiate; it starves. It should not be called the "Short Ballot," but the "Short Ration." It does not give; it takes away. It assumes incompetency, and proceeds on the theory that the people desire to surrender their voting rights.

Pure democracy, with its direct ballot, is impossible with 10,000,000 of people. Its opposite, an aristocracy or monarchy, is contrary to all our traditions. Our fathers gave us a middle course, representative government. To this let us cling. The Constitution is the embodiment of the experience of the past. It needs repose, not change.

ARTHUR J. BALDWIN.





# IN CONVENTION

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## DOCUMENT

No. 41

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### ADDITIONAL MINORITY REPORTS FROM THE COMMITTEE ON GOVERNOR AND OTHER STATE OFFICERS

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AUGUST 12, 1915

Mr. Blauvelt presented the following minority report from the Committee on Governor and Other State Officers:

It is not the purpose of the undersigned in submitting the following minority report to disagree with the majority members of the Committee on Governor and State Officers on the fundamental proposition that the executive branch of our State government needs reforming. It must be conceded by all students of our administrative system that in the course of its evolution the system has become complex and unwieldy. This has been due, in a large measure, to the manifold activities which the State has embarked in from time to time since its creation, and to the fact that our earlier conventions have failed to provide such a scheme of executive management as may readily be adjusted by the legislature to meet the constantly increasing needs of government along administrative lines.

The majority members of the Committee, in submitting their proposed amendments to Article V, take the position that adequate

reforms can be accomplished and efficient and economical government maintained through the adoption of the following propositions:

(1) By a mandatory reclassification of all administrative functions of government into a few defined groups and the assignment of those functions, partly by constitutional provision and partly by legislative enactment, to the several civil executive departments named in the proposed article submitted by them.

(2) By the adoption of the so-called "Short Ballot" proposal, in a modified form, whereby the governor shall have the power of appointment of all administrative heads of State departments, except the Comptroller, the Attorney-general and the heads of the Departments of Conservation and of Education.

(3) By giving a discretionary power of removal to the Governor of the chief executive officers appointed by him whose duties are solely administrative.

(4) By prohibiting the legislature from creating new departments not named in the article and commanding it to assign such new functions as may be created, from time to time, to some one of the departments therein named.

I am not opposed to the idea that there should be a reclassification and redistribution of the administrative agencies of government, but I do disagree with the proposition that the Constitution should arbitrarily assign particular powers and duties to a department. Such an assignment must, in my opinion at least, necessarily imply a limitation on the power of the legislature to create a flexible administrative scheme to meet the practical necessities of government. This objection is not removed by the provisions of Section 19 of the proposed article which, among other things, provides that "the legislature may from time to time assign by law new powers and functions to officers, boards or commissions continued or created under this Constitution, and increase, modify or diminish the powers of such departments," for the reason that the power of the legislature in that respect is made subject to the limitations specifically defining the powers and duties of particular departments. I believe that the matter of reclassification and redistribution of powers should be left wholly with the legislature.

I hold that the term "Short Ballot" is a misnomer and that administrative reform can never be accomplished through the mere shortening of the election ballot. I favor the most rigid reforms in our administrative system but I disagree with the majority of the Committee that such reforms can be accomplished through the centralization of complete executive power in the Governor by giving to him the power of appointment and removal of all administrative State Officers. I would not take away from the people the right to select those State officers, such as the Secretary of State, Attorney-general, State Treasurer and Comptroller, whose powers and duties are and should be independent of the control of the Governor. Their independent action is frequently necessary to restrain the too often unwise exercise of power by the executive.

I favor the proposition that the Governor should be given the power of removal of appointive administrative officers, but I disagree with the proposition that he should be given the arbitrary power of removing those officers, such as public service commissioners, civil service commissioners and the like, whose powers are or may be partly administrative, partly legislative and partly judicial.

Lastly, I see no reason why the Legislature may not well be prohibited from creating new executive departments of government, provided sufficient flexibility of action is accorded to it in making assignments of new and additional governmental activities.

I respectfully submit to the consideration of the Convention the following proposed amendment which, I believe, is better adapted to accomplish executive reform than any thus far proposed.

#### "ARTICLE V.

"Section 1. There shall be the following civil executive departments under the state government: Of state, of audit and control, of law, of finance, of public works, of health, of agriculture, of charities and corrections, of banking, of insurance, of education, of labor, of highways and of internal affairs, respectively. The head of the department of state shall be the

secretary of state; of audit and control, the comptroller; of law, the attorney-general; of taxation and finance, the treasurer; and of each of the other departments, a commissioner to be appointed as provided in this article, except that the department of education shall be administered by or under the direction of the corporation known as the University of the State of New York, which may have a chief executive officer as now or hereafter provided by law."

Section [1.] "2." The secretary of state, comptroller, treasurer [,] "and" attorney-general [and state engineer and surveyor] shall "continue to" be chosen at a general election, at the times and places of electing the governor and lieutenant-governor, and shall hold their offices, respectively," for [two years, except as provided in section two of this article. Each of the officers in this article named, excepting the speaker of the assembly, shall at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of state engineer and surveyor who is not a practical civil engineer.] "the same term as the governor. The state engineer and surveyor shall continue in office for the term for which he was elected unless sooner removed, and at the expiration of such term the said office is abolished."

[§ 2. The first election of the secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor, pursuant to this article shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.]

"Section 3. Every commissioner at the head of a civil executive department hereinbefore provided for and the secretary of charities and corrections shall be appointed by the governor, by and with the advice and consent of the senate, and be removable

at his pleasure. This section shall not apply to the head of the department of education.

“Section 4. The existing public service commissions are continued and the commissioners now in office shall hold their offices until the expiration of their terms. The terms of their successors shall be five years. Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the legislature from enacting laws not inconsistent with this section and article changing such jurisdiction, powers and duties; except that the legislature shall not enact any law prescribing a rate or charge or a standard of service, equipment or operation for any public utility until after it has received from one of the commissions a report thereon made after investigation and hearing at which interested parties may introduce evidence, or until after the expiration of such time following a request for such report as may be prescribed by law. Decisions and orders of the commissions shall be subject to review by the courts in such manner and to such extent as the legislature may provide.

Section 5. There shall be a conservation commission, to consist of nine commissioners, whose terms of office shall expire in nine successive years, the first ending on January first, one thousand nine hundred and seventeen; and the terms of their successors shall be nine years.”

“Section 6. There shall be a state civil service commission, to consist of three commissioners. Their terms of office shall be six years, but the terms of the first commissioners shall be so classified that the term of a commissioner shall expire every two years after the first day of January, one thousand nine hundred and seventeen. Such commission shall see that the provisions of this article relating to appointments and promotions in the civil service of the state and of the civil divisions thereof and all laws enacted thereunder are faithfully observed and enforced.

Section 7. There shall be a state workmen's compensation commission, to consist of five commissioners. Their terms of office shall be ten years, but the terms of the first commissioners shall be so classified that the term of a commissioner shall expire every two years after the first day of January, one thousand nine hun-

dred and seventeen. Such commission shall see that the provisions of article one of this constitution relating to compensation for injuries to employees and for death of employees resulting therefrom and all laws enacted thereunder are faithfully observed and enforced."

[Section 3. A superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal and the cause thereof to the legislature at its next session. The superintendent of public works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the superintendent of public works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the superintendent of public works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the governor, in writing, the

cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works, and be subject to suspension or removal by him. The superintendent of public works shall perform all the duties of the former canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the legislature. The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate.]

[Section 4. [A] “The present” superintendent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of state prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of state prisons. The governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.]

“Section 8. The department of charities and corrections shall be administered by the secretary of charities and corrections. The state board of charities, the state commission in lunacy, to be hereafter known as the state hospital commission, and the state commission of prisons are continued with all the powers vested in them by this constitution on the first day of September, one

thousand nine hundred and fifteen, and with such powers as have heretofore been vested in them by the legislature, subject to the powers of the legislature to increase, modify or diminish the same by provisions not inconsistent with this section. The office of superintendent of state prisons and the powers and duties attaching thereto, as prescribed by law or by the provisions of this constitution as existing on the thirty-first day of December, one thousand nine hundred and fifteen, shall continue, subject to the power of the legislature to modify or enlarge such powers and duties not inconsistent with said provisions of the constitution, until the first day of January, one thousand nine hundred and seventeen, and the present incumbent, unless sooner removed and a successor appointed under said provisions of the constitution, shall continue until that day, when such office shall be abolished. Thereafter such powers and duties shall continue and devolve upon the said secretary, subject to such power of the legislature to modify and enlarge the same not inconsistent with said provisions of the constitution or of this section. Such secretary shall have power of inspection and supervision of all state charitable institutions, state hospitals for the insane, state prisons and other state correctional institutions. He shall take care that all the laws relating to such institutions are faithfully observed and shall perform such other duties in relation to the charities and corrections of the state and of any civil division thereof as may be imposed upon him by law. Existing boards of managers of institutions referred to in this section are continued until the legislature shall otherwise direct."

Section [5] 9. The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer [,] "and" attorney-general "," and "the" state engineer and surveyor "while such office continues," shall " , unless the legislature otherwise provides," be the commissioners of the land office. The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general shall, "except as otherwise provided in this article," be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund [,] "and of" the state engineer and surveyor [,] and [the] superintendent of public works " while such offices continue."



[Section 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.]

Section [7.] "10." The treasurer may be suspended from office by the governor, during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office during such suspension of the treasurer.

[Section 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.]

Section [9.] "11." Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

"Section 12. The canal board and the offices of commissioners of the canal fund, as such, shall be abolished from and after the first day of January, one thousand nine hundred and sixteen and the powers and duties attaching to such office at that time, by this constitution or by law, shall devolve upon the department of public works, subject to the power of the legislature to enlarge or modify the same not inconsistent with the provisions of this constitution relating to such offices and board. The office of superin-

tendent of public works and the powers and duties attaching thereto, as prescribed by law or by the provisions of this constitution as existing on the thirty-first day of December, one thousand nine hundred and fifteen, shall continue, subject to the power of the legislature to modify or enlarge such powers and duties not inconsistent with said provisions of this constitution, until the first day of January, one thousand nine hundred and seventeen, and the present incumbent of such office, unless sooner removed and a successor appointed under said provisions of this constitution, shall continue until that day, when such office shall be abolished. Thereafter such powers and duties shall continue and devolve upon said department, subject to such power of the legislature to modify and enlarge the same not inconsistent with said provisions of this constitution. The powers and duties now exercised by any board, division, authorities or subordinates of the existing department of labor in relation to workmen's compensation shall on such date devolve upon the workmen's compensation commission created by this article.

“ Section 13. The legislature shall distribute among the several executive departments and the respective commissions provided for in this article all the administrative powers and duties now exercised by the state through any boards, officers, bodies or commissions thereof, not inconsistent with the provisions of this article which include particular powers and duties in the functions of a department or commission. Such distribution shall be made in such manner that no two or more departments or commissions shall have powers and duties relating to the same matter; but the legislature shall provide for the exchange of data, reports and information between departments and commissions where necessary to facilitate the work of any department or commission. Where state functions are or shall be exercised by local authorities with reference to a given subject, such authorities shall report and account to the department or commission having charge of the same subject. Except as otherwise expressly provided in this article, the legislature may continue existing offices, departments, boards and commissions or create new ones, but they shall be placed within and subordinated to the executive departments or

the commissions created by this article. Except as otherwise provided in this article, existing state departments, boards, offices and commissions are continued with their existing powers and duties, subject to the power of the legislature to enlarge or modify the same, until the legislature shall distribute their powers and duties as above provided; but it shall be the duty of the legislature to make such distribution at the first session following the adoption of this constitution or as soon as practicable thereafter. Existing appointive officers under the state government shall hold office until the expiration of their respective terms, unless sooner removed according to law, but nothing herein contained shall prevent reorganizing their several offices by placing the same under any of the departments or commissions provided for in this article.

“Section 14. The commissioners of the public service commissions, civil service commission, workmen’s compensation commission and conservation commission shall be appointed by the governor by and with the advice and consent of the senate. Such commissioners, except the commissioners of conservation, shall receive a compensation to be fixed by law which shall not be increased or diminished during their respective terms. Heads of departments appointed by the governor shall receive a compensation to be fixed by law which shall not be increased or diminished during the term of the governor making the appointments. Any commissioner or head of a department shall, unless sooner removed, hold office until the appointment and qualification of his successor.

“Section 15. All officers and commissioners named in this article may be removed from office by impeachment in the same manner as the governor. The attorney-general, comptroller, treasurer and secretary of state, and commissioners provided for in this article whose appointment is made by the governor by and with the advice and consent of the senate for fixed terms, may also be removed by the senate by a vote of two-thirds of all the members elected thereto, upon the recommendation of the governor, stating the grounds therefor.

Section “16.” Vacancies occurring in the offices of attorney-general, comptroller or secretary of state shall be filled for the re-

mainder of the term at the next ensuing general election happening not less than three months after such vacancy occurs. Until the vacancy be so filled by election, the governor, or if the senate be in session, the Governor by and with the advice and consent of the senate, may fill such vacancy by appointment which shall continue until the first day of the political year next succeeding the election at which such office may be filled. A vacancy occurring in a board or commission appointed by the governor by and with the advice and consent of the senate for a fixed term shall be filled for the unexpired term in the same manner as an original appointment, except that a vacancy occurring or existing while the senate is not in session shall be filled by the governor by appointment for a term expiring at the end of twenty days from the commencement of the next meeting of the senate."

GEORGE A. BLAUVELT.

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Mr. Bockes presented the following minority report from the Committee on Governor and Other State Officers.

Although favoring much of the majority proposal, I am unable to agree with that part of it which would prevent the Legislature from imposing additional duties upon the Comptroller and with that part which would prevent the Legislature from establishing any other separate subdivisions of government than those specified in the committee's bill. I fear that such restrictions would constitute too much of a straight-jacket around governmental activity to allow for wholesome, natural growth.

I am also unable to agree with that part of the majority proposal which would increase the relative power of the executive by appointment instead of popular election of all other important State officers except Attorney-General, as a cure for the present evil extravagance. I believe the cause of extravagance was the continually increasing power of appointment given to the Governor until proper check and balance between Governor and Legislature were gone and the Governor and his appointees became over-powerful to push his "my policies" through the Legislature, he taking the credit for the new idea and the Legislature taking the

blame for the new expense. If this is the cause the remedy is sure. It is to restore genuine co-ordination by the simple expedient of electing more administrative officers. This will not only restore the lost balance but also increase popular watchfulness and interest. Agriculture, Highways, State Engineering, Public Works, Elections and similar matters which constantly stand out in plain sight of every voter of the State should have elective rather than appointive heads if the people are still to be self-governing and watchful and willing to come out at elections and competent to approve or disapprove the record of the party in power. I fear that to make the Governor all powerful would make of elections a worthless wrangle over personalities instead of great educational campaigns.

I fear still more the result of making the chief fiscal officer appointive.

Respectfully submitted,

GEORGE L. BOCKES.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

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No. 42

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#### REPORT OF THE COMMITTEE ON THE JUDICIARY RELATIVE TO THE PROPOSED AMENDED JUDICIARY ARTICLE

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August 13, 1915

*To the Convention:*

Your Committee on the Judiciary has had referred to it by the Convention 153 proposed constitutional amendments, almost all of which apply to some portion of Article VI of the present Constitution. It has given public hearings to the proposers and to all others who have expressed a desire to be heard respecting these measures, as well as to representatives of the State Bar Association and of Associations of the Bar of cities and counties, with respect to these and many other matters concerning the administration of justice. It has had the benefit of the personal attendance before it of the Chief Judge and of all the living ex-Chief Judges of the Court of Appeals, the Presiding Justices of two of the Appellate Divisions of the Supreme Court, Justices of the Supreme Court, County Judges, Surrogates, and numerous other officials and citizens, and has heard a full expression of their views upon matters within the competence of your Committee, besides which it has invited and received written expressions of opinion from many other judges, lawyers and citizens. The statements,

views and recommendations thus submitted have been carefully considered, and your Committee has prepared and herewith reports an amended Judiciary Article to take the place of the present Sixth Article of the Constitution, and recommends its adoption. Before describing the proposed changes, a few words may properly be said as to the prime considerations which have controlled your Committee in its recommendations.

### LAW DELAYS

There is no subject affecting the welfare of the people, which has occasioned more complaint in recent years than that of delays in the administration of justice, and your Committee has given especial consideration to the present condition of the administration of the law in this State, for the purpose of ascertaining, first, to what extent undue and avoidable delay occurs in the administration of the law; second, the causes of such delay, and third, by what provisions these causes may best be removed.

No statistics are available from which to determine the extent of the undue delay which occurs after actions are commenced and before they are brought to issue and placed on the trial calendars of the courts. But that the Code of Civil Procedure furnishes ample opportunities for such delay through the various interlocutory and procedural motions which it permits or invites, is well known to all practitioners. Delays in securing trial after a case is on the trial court calendars at the present time are not so great as they were a few years ago, and these delays, in the opinion of your Committee, are due in far larger measure to litigants and their attorneys, than to the organization and conduct of the courts. Nevertheless, even when both parties are ready and anxious for trial, it requires a period of from eight months to one year after a case has been placed upon the trial term calendar in the first judicial district and in several of the counties in the second and ninth districts before it can be reached for trial. About three months or less is required at special term in the counties of New York and Kings, and a somewhat longer time in other counties in the districts mentioned. In the Appellate Divisions of the Supreme Court, and in the Appellate Terms, in the first and second departments, cases may be reached for argument at the monthly term to which the appeal is taken; but in the first department, the volume of appeals and its continued increase are such,



that your Committee is satisfied that without some radical relief the appellate courts cannot continue to keep abreast with the business before them. In the Court of Appeals, nearly two years necessarily elapse between the filing of a return on appeal and the hearing, unless the cause is preferred by law. The Court of Appeals has made up no calendar of pending cases since May, 1914, and on May 21, 1915, there were 622 cases pending undetermined in that court, including the undisposed of cases on the calendar and those in which returns were filed after the calendar was made up.

### CIVIL PROCEDURE

Underlying all these conditions, is a more fundamental cause with which your Committee has sought to deal, and that is the character of the civil procedure prescribed by law for courts of record in this State. The vice of this system lies, not simply in the enormous body of complex and conflicting legislative rules which constitute the Code of Civil Procedure, but in the uncertainty of those rules, resulting from constant legislative tinkering.

The entire legal profession, as well as representative public bodies of various kinds, have for several years past advocated a change in the present complicated and unwieldy system of judicial procedure established by the Code, and the technicalities and uncertainties resulting from constant legislative amendment of it. In recognition of this demand, the Legislature in the year 1913 constituted a commission which at its last session submitted a report embodying a short practice act in seventy-one sections, and a body of rules for the regulation of procedure in the principal courts of record in accordance with this practice act. The report was transmitted to the Legislature by the Governor on April 21, 1915, and, pursuant to his recommendation, the Legislature promptly appointed a joint committee to examine the same and report upon it at the 1916 session. While the time permitted for its examination has been too short to justify your Committee in recommending that the Legislature be required to enact this particular measure into law, yet the principles upon which it is framed are those which have been almost universally approved and advocated by the bar, and your Committee therefore feels justified in reporting a provision making it the duty of the Legislature to act upon the report at its next session, and to enact a brief and simple practice act,—whether that now recommended, or

another — and adopt a separate body of civil practice rules for the regulation of procedure in the principal courts of the State. For the purpose of ending the practice of constant legislative amendment, which hitherto has rendered the law of civil procedure uncertain, and thus fostered and encouraged vexatious and unnecessary litigation and delays in the administration of justice, your Committee recommends that the Legislature be empowered at intervals of not less than five years to appoint a commission to consider and report what changes, if any, should be made in the law and in the rules governing civil procedure, that the Legislature shall act upon the report of such commission by a single bill, and that subject only to this provision, the power to make and alter the rules governing civil procedure be vested in the Judges of the Court of Appeals and the Supreme Court, and the Legislature prohibited from enacting any law affecting the same except at the request of those Judges. The enactment of this provision will in the opinion of your Committee constitute a long step forward in the simplification of the civil procedure of this State.

#### SUPREME COURT COMMISSIONERS

Your Committee has also provided for the appointment by the Appellate Divisions in the First and Second Judicial Departments of such number of Supreme Court Commissioners as they may deem necessary who must be members of the bar of not less than ten years standing and who shall not practice law during their tenure of office. Such Commissioners are to have power to act as commissioners to fix compensation when private property is taken for public use, and to perform such other and further duties as may be devolved upon them by special order or rule of court.

These commissioners may be utilized under the new practice rules to determine many of the questions of procedure that now occupy the attention of the courts to the exclusion of more important matters.

#### OFFICIAL REFEREES

Your Committee has also provided for a continuance of the official referees, heretofore appointed pursuant to law from among judges whose terms of office have expired, and requires that in the future they be appointed by the Court of Appeals from among judges of the Court of Appeals and by the Appellate Divisions from among justices of the Supreme Court whose terms have

expired and who at the time of their retirement shall have served at least twenty years as judges of any court of record, or at least one full term of fourteen years as justices of the Supreme Court or judge of the Court of Appeals. In this way, the State secures the services of a body of highly trained judicial officers, at such compensation as the Legislature may fix; and on the other hand, a reasonable provision is made for the continued employment of men whose vigor of body and intellect enables them to perform valuable services in the administration of justice, even although they may have passed the age limit set for their continuance on the bench.

#### ATTORNEYS

Closely connected with the subject of undue delays in the administration of justice, is the question of qualifications and rules regulating the admission to practice of attorneys and counsellors in the courts of the State. The Legislature has devolved this jurisdiction by law upon the Court of Appeals, and in the judgment of your Committee the Constitution should confirm this power in the court.

#### STATISTICS

Your Committee has experienced some difficulty in securing comprehensive statistics regarding the judicial business of the State, due to the fact that there is no provision of law requiring courts to prepare and furnish periodically to any public official, or to publish, statistics of the judicial business. A report prepared by the clerks of the Supreme Court in the First Judicial Department for the year 1914, furnishes a model which might well be followed by the courts in other departments, and in order that a uniform rule shall be established respecting this subject, your Committee recommends that the Legislature be authorized to provide for the collection, compilation and publication annually of the civil and criminal judicial statistics of the State.

#### ORGANIZATION AND JURISDICTION OF COURTS

For the purpose of providing the requisite judicial machinery for the prompt disposal of litigation without delay, your Committee recommends a number of changes in the organization and jurisdiction of the courts, and a slight increase in the number of judges.

The number of justices composing the Appellate Division of the Supreme Court in the First Department, is increased from seven to not less than ten nor more than twelve, and in the Second Department from five to seven. To supply this enlarged force, provision is made for two new justices in the first judicial district.

The volume of appeals which at present come to the Appellate Division of the Supreme Court in the First Department, amounting during the last year to upwards of 1,500 cases, besides 840 original motions, is far greater than the court as at present constituted can properly continue to dispose of. It is true that until the present time the remarkable body of men now constituting that court has been able to pass upon and decide that number of cases, but they have done so by labors which should not be continuously required by the State of any body of judges, and which in framing the fundamental law of the State should not be assumed as the criterion of the amount of work disposable by any court of seven judges. No other court in the State passes upon much more than one-half the number of cases annually determined by the Appellate Division in the First Department, except the Appellate Division in the Second Department which in 1914 decided about 70 per cent. of that number. The continued increase in importance of the city of New York as a great, if not the greatest commercial center of the world, brings into the courts in the First Department a constantly increasing volume of litigation, involving questions affecting, not merely the citizens of that department but those of the entire State and of almost every other State and Nation. The average number of cases disposed of (not including original motions in the court) by the Appellate Division of the First Department in each of the five years ending 1904 was 1,032; during the five years ending 1914, 1,389. The number of appeals decided in 1904 was 1,053; in 1914 it was 1,534. Your Committee feels great doubt as to whether or not even a court of ten or twelve judges, five of whom are sitting continuously four weeks in every month, can dispose of such a volume of business, and it has therefore provided that the court may, should it find it necessary, sit in two parts, each composed of five justices, both under the direction of one Presiding Justice. It also proposes to authorize the Appellate Division to call in other justices from the Supreme Court for temporary service in case of the illness or absence of one of the regularly assigned justices. The provisions in the present Constitution authorizing the Governor to assign additional justices to

an Appellate Division on request, are retained, and the provisions for transferring cases from one division to another by vote of the Presiding Justices in case an Appellate Division is unable to dispose of its business within a reasonable time, are retained and made mandatory.

#### APPELLATE TERMS

To further relieve the Appellate Divisions in the First and Second Departments, your Committee proposes to increase the number of justices assignable to the Appellate Terms from three to five, and to give to those branches of the court greater effectiveness by making the assignments for periods of one year. All appeals from judgments and orders in civil cases, made by County Courts within those departments, as well as by the City Court of New York, the Municipal Court of the City of New York, the Court of Special Sessions of the City of New York, and all other inferior or local courts, except those held by Justices of the Peace, are required to be heard at the Appellate Term, and the Legislature is empowered to enlarge or modify the jurisdiction of that court and the right of appeal thereto.

Your Committee considered a provision giving to the Appellate Term jurisdiction of appeals from all interlocutory and procedural orders, but decided that it would not be practicable substantially to add to the volume of work now disposed of by this Court. The Appellate Term in the First Department during the year 1914 heard and decided 2,150 appeals from judgments and orders of the Municipal Court of the City of New York and the City Court of New York. The measure recommended by your Committee would give to it also jurisdiction of appeals from the Court of Special Sessions. By allowing the Appellate Division to assign five justices to sit at the Appellate Term, provision is made for relieving undue pressure upon the court. To add further to its jurisdiction, would require the permanent designation of a larger number of justices and interfere with the necessary assignments for the Trial and Special Terms. The judges sitting in the Appellate Term are not prohibited from transacting any other business of the court, and are therefore available for interlocutory applications, but your Committee confidently expects that the result of the operations of the new practice rules, when adopted, will be very greatly to diminish the amount of litigation from purely procedural matters.

## COURT OF APPEALS

Perhaps the most troublesome question with which your Committee has had to deal, is the composition and jurisdiction of the Court of Appeals. The Constitution of 1894, by creating the Appellate Divisions as courts of appeal of general jurisdiction, and limiting the Court of Appeals to review of questions of law only, sought to confine the Court of Appeals to the function of settling the law for the entire State in the interests of uniformity and public justice, as distinguished from the settlement of controversies between individuals merely. The Committee on the Judiciary in that Convention recommended a permanent increase in the number of judges from seven to nine, but that proposed increase was defeated in the Convention. Provision was, however, made for the temporary assignment to that court by the Governor of not more than four Justices of the Supreme Court, and for several years past three justices have been sitting under such designations. Those provisions, it was anticipated, would enable that court to keep abreast of its business. There was at the time of the Convention of 1894 an arrearage of about 175 cases in the Court of Appeals, and it was predicted by some of the delegates in discussing the report of the Judiciary Committee, that this number might be increased to between 300 or 400 by the time the new Judiciary Article became effective, viz.: January 1, 1896. As a matter of fact, there is now an accumulation of more than 600 cases pending in the Court of Appeals, and the average time required between the date of filing return and the cause being reached for argument, unless it is entitled to a preference, is about two years. The Court has made up no calendar since May 4, 1914, and the calendar then made up embraced returns filed to April 20, 1914, only. The number of cases on that calendar was 714. During each of the five years ending 1914 the Court has disposed of on the average 671 cases, and the average number of returns filed has been 769, so that each year adds on the average 100 cases to the number accumulating in the court. Your Committee agrees with the statement of principle made by the Judiciary Committee in its report to the Constitutional Convention of 1894, in the following language:

“ Every State is bound to give its citizens one trial of their controversies and one review of the rulings and results of the trial by competent and impartial appellate tribunal. When

this is done, the duty of the State to particular litigants involved in a case is fully performed. There is no consideration either of public duty or private interests involved in litigation which requires a second appeal and a second review."

Regarding, therefore, the judicial function of the Court of Appeals as that of settling the law for the whole State and maintaining one consistent and harmonious system of justice, your Committee reports provisions: (1) designed to dispose without further delay of the present accumulation of business in that Court, and to enable it in the future to dispose of undue accumulations as they arise; (2) further to limit the jurisdiction of the court so as to prevent the impairment of the line of demarcation between the general appellate courts and the Court of Appeals. Your Committee, therefore, recommends that the number of permanently elected Judges be increased to ten, and that the three Justices of the Supreme Court at present designated to sit as Associate Judges of the Court of Appeals be continued as such until the expiration of their terms. For the purpose of disposing of the present accumulation of cases, the Court of Appeals is required within three months after the new Constitution takes effect, to designate, for temporary service, not less than four nor more than six Justices of the Supreme Court to sit as Associate Judges of the Court of Appeals, and thereupon to divide the Court into two parts, distributing the permanent and temporary judges equally between such parts, each of which shall have jurisdiction to hear and dispose of the cases on the calendar of the court, which shall be distributed between them by the Chief Judge. When these accumulations are disposed of by reducing the number of cases to 200, *and not later than December 31, 1917*, the Supreme Court Justices are to return to their Court, and the Court of Appeals resumes its normal condition as a single body. Experience in the past having demonstrated that no matter what provision is made to meet the increasing business of the Court of Appeals, there is always danger of undue accumulations resulting in delays of from one to two years in reaching cases for hearing, the Court is further required to make up a calendar at least once in every year, and it is provided that if on the first day of January in any future year, there shall be more than 500 cases pending undisposed of on its calendar, the Court shall again call in the Supreme Court Justices and shall sit in two parts and dispose

of such accumulations, and when that is accomplished, *and not more than one year later*, the Justices shall again return to the Supreme Court, and the Court of Appeals resume its normal condition. For the purpose of enabling the Court to retain its maximum strength at all times, provision is further made for calling in Justices of the Supreme Court to take the places of Judges of the Court of Appeals temporarily disqualified by absence or illness, but for periods of not exceeding six months.

Your Committee recognizes the objection to dividing the Court of Appeals under any circumstances into two parts. But unless the Court shall be left to struggle with its constantly increasing accumulation of cases, no alternative to that recommended presents itself, except the creation of a separate Second Division or Commission of Appeals, which in the past has proved unsatisfactory to the profession and the public. The alternative recommended by your Committee appears to it to avoid the objection to such division so far as possible; first, by assuring the temporary character of the division, not only by prescribing that it shall cease when the number of causes has been reduced to a definite figure, but by fixing the *time* at the expiration of which the temporary designations shall expire, this time being estimated to be somewhat more than should reasonably be required for the two parts to dispose of the accumulation of cases requiring the temporary expansion of the Court; second, by providing that a majority of the Judges in each part of the Court shall be composed of members of the permanent court, thus reducing the probability of differences of view resulting in a divergence of opinion to the narrowest bounds of possibility, and third, by giving the Chief Judge control over both parts of the Court with power himself to sit in either of them.

Your Committee recommends the following modification in the general prohibition against the Court of Appeals reviewing facts in any case, viz:

Under the provisions of section 1317 of the Code of Civil Procedure, the Appellate Division on reversing or modifying a judgment is empowered to make new findings of fact and render judgment thereon. In such cases, the Appellate Division in effect acts as an original trial court, and unless a review is allowed in the Court of Appeals, the litigant is deprived of the right, conceded to all other litigants, of at least one full review upon appeal from the judgment of the trial court. With this ex-



ception, the present limitation of the jurisdiction of the Court of Appeals to questions of law only is retained.

The class of appeals which may be taken as a matter of right is also restricted and limited to the following cases only:

(1) Where the judgment is of death;

(2) From a judgment or order entered upon a decision of the Appellate Division which finally determines an action or a special proceeding directly involving the construction of the Constitution of the State or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified;

(3) From an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him.

The Court of Appeals is, however, empowered itself to allow an appeal in any case where a question of law is involved which in its opinion ought to be reviewed by it; but the power now vested in the Appellate Division allowing such appeals is taken away.

Your Committee recommends one further modification in the jurisdiction of the court. Previous to 1894, the question whether or not there was any evidence to support a finding of fact or a verdict was regarded as one of law, but in the Constitution of 1894 there was inserted in Article VI, section 9, a provision that "no unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to support a finding of fact or a verdict not directed by the court shall be reviewed by the Court of Appeals." The testimony of almost all of the judges who appeared before your Committee is to the effect that the practical operations of that provision have resulted unsatisfactorily; the New York State Bar Association, the New York Association of the Bar, the New York County Lawyers Association, and others, have united in the recommendation that this limitation be stricken from the Constitution, and your Committee has, therefore, so reported. Briefly, it may be stated, as is done by the Special Committee of the Association of the Bar of the City of New York, that "this provision has frequently operated to preclude the review of what is essentially a question of law, and it has applied unjustly to many cases quite beyond the scope contemplated by its framers."

## SURROGATES

In 1913, the Legislature enacted a recodification of the law regulating the jurisdiction and practice of Surrogates and Surrogates' Courts, which vested them with much greater jurisdiction over the administration of the estates of decedents than theretofore had been enjoyed by them, including jurisdiction, in their discretion, in any proceeding in which a controverted question of fact arises of which any party has a constitutional right of trial by jury, and in any proceeding for the probate of a will, in which a controverted question of fact may arise, either to conduct the trial by jury in the Surrogate's Court, or to refer the same to the Supreme Court to be tried at a trial term held within the county or in the County Court of the county. With some hesitation, your Committee has reached the conclusion to continue the present jurisdiction of the Surrogates as so modified, until otherwise provided by law. This will leave the whole subject within the discretion of the Legislature, and if experience shall demonstrate the need of some modification of the jurisdiction, the Legislature may act accordingly.

## COUNTY COURTS

The jurisdiction of the County Courts in actions at common law for the recovery of money is increased from \$2,000 to \$3,000, and they are also given jurisdiction over actions against non-residents having an office for the regular transaction of business within the county, upon causes of action arising within the county.

The existing Constitution prohibits a County Judge or Surrogate in a county having a population exceeding 120,000 from practicing as attorney or counselor-at-law or acting as referee. Much criticism has arisen respecting the effect of permitting County Judges and Surrogates in other counties to practice law. The opposition to making a general prohibition of the practice results from the unwillingness or inability of the counties to sanction legislative increase in the salaries of these officials to an amount which would compensate competent judges. After careful consideration, your Committee recommends an extension of the prohibition so as to apply to all counties having a population of 75,000 or upwards. This will result in extending it to thirteen additional counties, all of them prosperous and apparently abundantly able to adequately compensate such officials for the loss of opportunity to add to their salaries by private practice.

In order, however, to make it possible to secure competent men for those positions, in view of this action, the Legislature is to be further empowered at any time to consolidate the offices of County Judge and Surrogate in any county. The compensation of the County Judges is to be directly fixed by the Boards of Supervisors of the counties, or other officials exercising powers similar to those now vested in such boards, instead of through the Legislature as at present, and except in case of such consolidation, it is provided that the compensation of a judge or justice of any court in the State, shall be neither increased nor decreased during the term of office for which he was elected or appointed.

#### COMMISSIONERS OF JURORS

In conformity with the recommendation of a number of judges who have appeared before it, your Committee reports a provision for the appointment of Commissioners of Jurors in all counties having a population of upwards of 75,000 inhabitants, to be chosen by the Justices of the Supreme Court, their terms of office and compensation to be fixed by the Legislature, which shall also prescribe and define their duties.

#### IMPEACHMENT

One of the arguments employed by advocates of the recall of judges has been that the proceeding to remove judges by impeachment was so cumbersome as to be impracticable, and not to afford a feasible remedy for the removal of an unfit judge, save in extraordinary cases of political significance. For the purpose of removing this argument and, without in the slightest degree detracting from the dignity and importance of trial by impeachment, but to make it conform with the reasonable requirements of practical judicial procedure, your Committee recommends a provision authorizing the Court for the Trial of Impeachments to order all or any part of the testimony to be taken and reported by a committee composed of members of the court, reserving, however, to the impeached officer the right to testify before the court, if he so desire.

#### COURT OF CLAIMS

To end the recurrent scandals resulting from the Legislature dealing with the Court of Claims as a mere political football, your Committee has provided for the continuance of this court as a con-

stitutional court. Two courses only appear to be open in dealing with this matter. One, to transfer to the Supreme Court the jurisdiction now exercised by the present Court of Claims, the other, to provide in the Constitution for the continuance of that tribunal as a court. The Court of Claims is the development of the Legislative Committee or Statutory Board of Audit. Its jurisdiction is essentially different from that of ordinary courts of justice. It should have power to exercise this jurisdiction in a simple summary manner, without being hampered by technical rules of law, and your Committee, therefore, recommends that it be continued as at present constituted, with power in the Legislature to increase its members, the judges to have authority separately to take testimony in any case, but a majority of the court to concur in any award.

#### CONSOLIDATION OF LOCAL COURTS

Very greatly increased efficiency has been realized by the consolidation of numerous small courts into single tribunals, so organized that their entire judicial force may be kept occupied, and the business within the jurisdiction of the court fairly distributed among its various terms and parts. Numerous and different plans of consolidation have been advocated before your Committee, some even going to the length of urging the absorption of all the courts of the State into one great tribunal, having original and appellate jurisdiction. Without yielding to such extreme suggestions as these, your Committee has realized the force of the criticism of the unsatisfactory organization of the courts of civil and criminal jurisdiction in the city of New York, intermediate the Supreme Court and the courts of inferior civil and criminal jurisdiction. These latter courts recently have been reorganized, so that the court of limited civil jurisdiction, the Municipal Court is vested with jurisdiction throughout the Greater City, holding terms in each of the five boroughs, its judges, under the direction of its Presiding Judge, being authorized to sit wherever the business of the court requires, and that business being distributed as the requirements of its due and prompt determination may demand. The Court of Special Sessions, and the Magistrates' Courts in the city of New York, in like manner have been reorganized with jurisdiction throughout the greater city, and with provisions for the conduct of its business similar to those applicable to the Municipal Court. The Association of the Bar of the city of New

York has recommended that the Legislature be empowered to abolish County Courts within the City of New York and to extend over the whole city, the jurisdiction of the Court of General Sessions in and for the city and county of New York, so far as regards criminal jurisdiction, and the jurisdiction of the City Court of the city of New York, so far as regards civil jurisdiction. In its opinion, such consolidated courts would relieve the Supreme Court of a great number of small cases, and would make homogeneous courts of civil and criminal jurisdiction, respectively, which would better meet the requirements of the business in the city of New York than the existing separate courts. Similar consolidations have been made with very satisfactory results in other cities. In conformity with those recommendations, your Committee reports the following provisions:

From and after January 1, 1917, the jurisdiction of the Court of General Sessions of the City of New York is extended throughout the greater city. The County Courts of Kings, Queens, Richmond and Bronx are abolished, and their jurisdiction transferred to the Court of General Sessions, the judges of such County Courts becoming judges of the Court of General Sessions, the successors of the judges so transferred to be elected by the electors of the counties in which they respectively reside. Owing to the rapid growth of population in Bronx county, the Legislature is empowered to provide one additional judge from that county if it shall deem it proper so to do. One of the principal difficulties in accomplishing this consolidation lies in the difference in the salaries paid to the judges. Those of the Court of General Sessions at present receive salaries of \$17,500 per annum, the County Court Judges in Kings, Queens and Bronx each \$10,000 per annum and in Richmond \$7,500 per annum. Your Committee has provided that the present incumbents shall continue to receive those salaries until the expiration of their respective terms, but that their successors, who shall be elected for periods of fourteen years, shall be paid a salary to be fixed by the Legislature.

From and after January 1, 1917, the jurisdiction of the City Court of New York is extended throughout the Greater City, and the pecuniary limit for which it may entertain actions for the recovery of money increased to \$5,000. Provision is made for electing additional judges of the court, two from the county of Kings, and one from each of the counties of Bronx and Queens.

The Legislature is empowered to provide one additional judge from Kings County should it deem proper so to do. The amount of civil business in the County Court of Richmond does not seem sufficient to require provision to be made for a judge of the City Court from that county, but provision is made for a separate surrogate therein.

#### CHILDREN'S COURTS

To enable the Legislature to keep pace with modern theories of dealing with delinquent children, not as criminals, but as wards of the State, and of regulating domestic relations on a broader basis than the mere enforcement of penal laws, your Committee has reported a provision empowering the Legislature to establish inferior or local courts with territorial jurisdiction throughout the counties in which they are situated, and to confer upon them, or upon existing courts, power to try without a jury offenses of the grade of misdemeanor, and to establish children's courts and courts of domestic relations, with jurisdiction found to be essential for the successful administration of such courts.

#### JURY EXEMPTIONS

Exemptions from liability to jury service have been granted by the Legislature from time to time to various classes of citizens. It is difficult to imagine any sound reason for the existence of some of these exemptions. Many judges who have appeared before your Committee have attributed to these exemptions difficulties experienced in securing in important cases juries of sufficient intelligence to comprehend the issues involved. Your Committee is inclined to the opinion that except in the case of physicians and surgeons in active practice, exemptions from liability to jury duty should be limited to persons employed in the public service; but recognizing the difficulty of fairly determining this question within the limitations necessarily imposed upon it, your Committee has recommended that no others be exempt unless and except the judges empowered to make the Civil Practice rules shall so provide. It is believed that this body, charged with formulating the rules governing procedure in the Courts, will be better qualified to determine what classes of persons may be exempted from jury duty without impairment to the administration of justice. Soldiers and sailors of the United States army or navy, members of the National Guard and volunteer firemen now

serving as such or heretofore honorably discharged are excepted from this prohibition.

### TORRENS LAW

The Committee has also recommended a provision authorizing the enactment of laws to provide for a system of judicial authentication and guaranty by the State or by any county of titles to real property, the determination of adverse claims to and interests therein and the establishment by means of fees or otherwise of protective funds to make such system operative, and to confer upon existing courts of record such administrative powers as are necessary in carrying out such system. The advocates of the so-called Torrens Law system have pressed upon your Committee recommendations for the establishment of separate land courts or land divisions in the Supreme Court and provisions authorizing the Legislature to confer upon administrative officers judicial powers in carrying out this system. Your Committee has felt, however, that no separate Land Division or Land Court was either necessary or desirable, and it is of the opinion that it is inexpedient to confer judicial powers upon administrative officers.

Your Committee has adopted and included in the article reported portions of the proposed constitutional amendments introduced by the following named delegates: Messrs. Clearwater, Steinbrink, Aiken, Rodenbeck, Baldwin, R. B. Smith, Cobb, Mandeville, Reeves, C. H. Young, Tuck, Sheehan, Fobes, Rosch, Lincoln, Heaton, McKean, Leggett, Ostrander, Coles, Brenner, Barrett, Dunmore, Angell, Wiggins, Green, Stimson.

Your Committee gratefully acknowledges the valuable suggestions, explanations and information received from the gentlemen who introduced these amendments as well as from other proposals which furnished helpful suggestions.

GEORGE W. WICKERSHAM,

*Chairman.*

LOUIS MARSHALL,  
ALBERT F. GLADDING,  
HENRY L. STIMSON,  
CHARLES H. YOUNG,  
MEIER STEINBRINK,  
WILLIAM N. DYKMAN,  
DELANCEY NICOLL,  
ROBERT F. WAGNER,

ADOLPH J. RODENBECK,  
A. T. CLEARWATER,  
WILLIAM F. SHEEHAN,  
D. RAYMOND COBB,  
CHARLES B. SEARS,  
EDGAR TRUMAN BRACKETT,  
(with some reservations),  
JOHN B. STANCHFIELD.

**MINORITY REPORT**

Mr. Dunmore presented the following minority report:

With profound respect for the judgment of the majority of this Committee and their report, I find myself constrained to dissent from it, but in one particular only, I am in perfect accord with all the provisions of the majority report excepting the provision containing the Court of Claims. While that is called a court, it is made in fact merely a board of audit. While this court annually passes upon greater property values perhaps than is passed upon by any like number of judges of the State, yet it is limited to fixing the value of the property, and is denied jurisdiction, to determine the value of a small incumbrance upon it. While this judiciary article recognizes this court as good enough as between the State and the owner to pass upon the value of property worth perhaps a million of dollars, it is not recognized as good enough as between the owner and a mortgagee to pass upon the amount owing upon a mortgage for a hundred dollars. Consequently after a claimant has had his lawsuit with the State he must have another law suit with the other claimants before he can get his pay for property taken from him by the State without his consent, I think the Court of Claims should have jurisdiction to determine the share of several claimants in any award. That would avoid multiplicity of actions and save expense and delay for claimants.

Dated August 12, 1915.

W. T. DUNMORE.



# IN CONVENTION

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## DOCUMENT

No. 43

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### ADDRESS OF PRESIDENT ELIHU ROOT, IN COMMITTEE OF THE WHOLE, RELATIVE TO THE PROPOSED AMENDED JUDICIARY ARTICLE

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AUGUST 19, 1915

Mr. Root — Mr. Chairman.

The Chairman — Mr. President.

Mr. Root — I want to say a few words which are stirred up by the appeal to memory by the gentleman from Saratoga. But in the first instance I want to suggest that if the gentleman from Saratoga will not keep out of the record his references to a break by Brother Byrne, that he change his description of the place from Mount Ararat to Mount Sinai.

I remember the conditions which existed prior to the adoption of the Short Civil Procedure Act of 1875, going back a good many years before. I was in the thick of the controversy long before Montgomery Throop charged it in his great tome which was called "The Code of Civil Procedure," and the controversy was between the old common-law practice and the advocates of the reform procedure which went all over the country.

That reform was accomplished under the express direction of the Constitution of 1846.

I remember that Mr. Stoughton, that able and eminent lawyer, never could speak of the code, when Mr. Field was anywhere about, without calling it "your d——d code, Mr. Field." I remember once being in court in a case in which both Mr. Field and Mr. O'Connor were engaged, and Mr. Field put some question during the argument to Mr. O'Connor as to the effect of the pleadings and O'Connor turned on him and said, "I understand, Mr. Field, that under your code, the plaintiff comes in and tells his story like an old woman, and the defendant comes in and tells his story like another old woman." That was all he could get out of O'Connor on this question of pleading.

These were the conditions, and they are continually recurring.

Under the old common law system practice had become so complicated and difficult that it was hard for an honest man to get his rights. There is a good deal of human nature in it. It has been so since the laws of the Medes and Persians were formulated; it has been so since the day of Egypt's power. Wherever a special class of men have been entrusted with the formulation and administration of law, they tend to make it a mystery; they tend to become more and more subtle and refined in their discriminations, until ultimately they have got out of the field where they can be followed up by plain, honest people's minds, and some power must be exerted to bring them back. The Constitution of 1846 exerted that power to bring the practice of the law out of the discredit into which it had fallen because of the intricacy and the complication and the technicality and the subtlety of the old common law practice. Mr. Field brought it back with the code, of three hundred and odd sections, which bears his name, and the reform in procedure went all over the country. Curiously enough, just about the time that England followed the example and adopted the reformed procedure in her judicature act of 1873, we began to take a back track and Mr. Throop's attempt to condense in a volume which was called the Code of Civil Procedure a great number of particular and minute provisions regarding practice was the first great step in that direction, in the backward direction.

Now, in the forty years which have elapsed, we have been following in that same pathway until the people of our State have come to regard the simplification of practice as one of the great issues

of the day. I believe there is no duty which is demanded from this Convention more generally than the duty to do something to make our practice more simple, speedy, inexpensive and effective. Why is it? A careful study of it reveals the cause, or the principal cause. I have listened to discussions and have taken part in them in the Bar Association of my own city, in the State Bar Association, in the American Bar Association, in countless conversations with lawyers and with laymen, and I say the cause of the prevailing discontent with our practice is to be found in the fact that year by year during all this period of forty years, there has been a continual addition, step by step, statute by statute, to the multitude of definite, certain, precise rules of procedure, binding upon the men that sought redress of wrongs in the courts. One of our most honored and beloved judges in the Court of Appeals said to me the other day, when I asked him how he thought this plan would work, "I have had since I came here to buy fifteen editions of the Code because it is so continually changed that after every session of the Legislature my last edition is useless," and he gave this plan his warm approval.

The trouble is not in a particular provision. These provisions that are put in are put in with good intent. The men who propose them in the Legislature are honest men; they believe that they are useful, but they are not the result of any general view of the subject. They are the result of particular views of the needs of particular cases; and a provision that a member of the Assembly or the Senate may well honestly believe to be useful upon his experience in a particular case, may work very badly, interfering with the obtaining of justice in many other different cases. And when you come to put them all together, you have a great variety of statutory rights. Each one of these is a statutory right: I heard the other day a lawyer in New York boast that he could postpone any litigation for seven years, and I asked a lot of friends as I came along whether that was true, and they all said they did not doubt it. How? Why, by compelling the honest fellow that comes into court to redress a wrong or to secure a right, to litigate one after the other these statutory rights that have been created by the Legislature. Courts cannot ignore them because they are rights given by law. The courts must observe the law, and

so the plain man who wants to get a wrong redressed has, bristling between his demand for redress and his judgment a dozen litigations that he has to fight out before he can get to the end of his cause.

My friends of the Bar, we have been making our system of procedure here conform to the subtle, acute, highly-trained ideas of lawyers. That is not the true basis. The system of procedure, of course, cannot be simple, but as far as possible, it ought to be made to conform to the plain man's intelligence and experience. It ought to be so that the farmer and the merchant and the laborer can understand it, and know why he is delayed in getting his rights; can understand that the processes to which he is subject have a reason and know what the reason is, otherwise you cannot have that respect for the law, that confidence in its justice necessary for the maintenance of a system of just administration. And furthermore the existence of this great variety of minute, detailed statutory provisions has been breeding up a great number of code lawyers, and by that I mean lawyers whose principal concern is with the statutory code of rights and not with getting justice for their clients.

Now, we ought to get back, get back to the fundamental idea of our profession which is the administration of justice. These minute, particular Code provisions substitute rules, multitudes of rules for the justice of the particular case. I agree with Mr. Brackett. I am old enough at the Bar to have the men who were my partners, my juniors, my clerks, sitting on the bench, and I look at them from a different angle from that which I can recall forty or fifty years ago when I looked up to those men high up above — they are men like the rest of us. But, my friends, they are honest and just. They want to do justice if they can be permitted to. They will do justice if they are permitted to. This network of meticulous rules that are made by our Legislature with honest purpose prevent them from doing justice in the particular case; and the people of our State and of our country understand this. They may not understand the details. They may not know why, but they feel that the pathway of justice is obstructed. They feel that the honest man would better lose his claim than go into court and spend his time and money in the law's

pursuit which seems to have no end. And they are indignant over it and restless and dissatisfied over it, and they look to us to do something. Now, what is it? What can we do? I can assure you that I have done the best I could for years to try to find some formula, some method by which the thing that the Constitutional Convention of 1846 did could be done again, for by a different route we have come into the same condition with which they dealt and after most earnest thought, particularly as the result of the discussions in all these Bar Associations, I have not found anything that offered so much light as the proposal of our Judiciary Committee.

Now, it is not simple, but show us something better. We must do something. We cannot go home and say to our friends and neighbors we have given you no relief in this matter that concerns you so deeply.

Show us something better than that. What is it? In the first place it requires the Legislature to act upon this report of the Commission on statutory provisions. It does not say how they shall act. We don't undertake to interfere with them in that.

In the second place, it requires them to pass some sort of a brief civil practice act and adopt some sort of rule of procedure; it requires these two divisions. That is following what our neighboring State of Connecticut has adopted. They have a practice act that you can fold up and put in your side pocket. When the Legislature in its wisdom has done that, then two results are provided, one is that the Legislature shall stop the eternal tinkering with the practice, stop passing laws which are brought in here by individual members upon a narrow view of the occasion for them; shall stop every year pouring out a stream of amendments, and making new rules to cure the evils of old rules, and shall confine its action to periodical action upon the report of a commission. I agree with the idea that the Legislature itself has not the time to elaborate and work out a system. They have got too many other things to do. Accordingly the practice has become quite universal of having commissions appointed which shall prepare and present to the Legislature well-considered measures. The Legislature is given the fullest power; that is, it retains the fullest power to act upon reforms. It does not have to have the recommendation

of the Commission. When the Commission has reported, the Legislature can throw their recommendation out the window if it sees fit; but the action of the Legislature is concentrated on the point where it has the report before it, so that it will act upon the subject and not upon the ideas of A to-day and B to-morrow and C the day after, upon particular rules but it will act upon a system of practice as a whole, upon the report of a commission of its own selection, and it will act once for all until another period has elapsed, and so you stop this meticulous interference with practice, and you have an opportunity to test the provisions which the Legislature adopts from time to time on the reports of its commissions. In the meantime the courts are authorized to proceed with their immemorial function of amending and adjusting the rules subject to the practice act of the Legislature so that they will contribute to the doing of justice in the individual case and discourage these technicalities and subtleties which tangle justice in the net of form.

Now, there is nothing that cannot be criticised; nothing that cannot be doubted. Of course the judges when they come to make their rules may make rules that Mr. Wickersham would approve and Mr. Brackett would disapprove, or it may be just the other way. But if the judges make rules or amendments to the rules that do not on the whole seem to be right, at the next period, when the Legislature takes the subject up, it will put into its practice act a provision that will control the bad rule. This provision reported by the Committee is highly meritorious in that it compels the Legislature to act in the broad way upon procedure as a whole, and at the same time it enables the Legislature to control and correct any tendencies by the court to go wrong in either direction. I have seen and heard of no proposal to accomplish the thing that we clearly must accomplish which seems to be so effective as that proposed by the Committee.

# IN CONVENTION

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## DOCUMENT

No. 44

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### REPORT OF THE COMMITTEE ON STATE FINANCES, REVENUES AND EXPENDITURES, TRANSMITTING PROPOSED AMENDMENT No. 815 (Int. 719)

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AUGUST 18, 1915

Mr. Stimson, for the Committee on State Finances, Revenues and Expenditures, makes the following report:

Your Committee presents herewith a bill which is intended to remedy abuses in the appropriations of public moneys for local improvements.

Section twenty of Article III of the Constitution adopted in 1821 was probably intended to apply to all appropriations made for local improvements. The courts, however, have held that such acts are not private or local but public, "inasmuch as the general improvement of the public highways of the State, whether canals or rivers that are navigable, is for the benefit of the State at large though some locality or some individuals may be benefited more than others."

Waterloo Co. vs. Shanahan, 128 N. Y. 345.

The power of making such improvements in the interest of the State at large is clearly one which must be retained by the Legis-

lature. The problem is to guard against its abuse, and the evidence that it is constantly abused is abundant. The debate on the budget brought out numerous specific instances of bills having been passed where the benefit to be derived by the State from the use of its moneys in the local improvement seemed extremely slender.

Your Committee further finds that it is not uncommon for an appropriation to be made and an undertaking begun without the Legislature having in its possession full or complete plans and estimates of the cost of the improvement. Thereafter when it turns out that the improvement will cost very much more than the original appropriation, the fact that the work has been begun and expenditures already incurred is made a reason for proceeding with a work which might never have been undertaken had the Legislature known its true cost.

Your Committee has considered carefully the various possible remedies to check the evil. The methods suggested in the enclosed bill were adopted as a regulation by the Senate Committee on Finance under the Chairmanship of Mr. Higgins, afterward Governor, and resulted in a great diminution in the number of bills. Some similar methods are also in use in the National Congress in dealing with river and harbor appropriation. The Congress requires the Chief of Engineers to certify before undertaking a given improvement that the river in question is worthy of improvement at the expense of the Federal Government at that time. Your Committee believes that the introduction of these methods of ordinary business prudence and foresight; to require the preliminary formulation of plans and estimates and the certificate of the responsible officer at the head of the department which has charge of State construction, will do far more towards checking excessive appropriations of this kind than the requirement of a two-thirds vote in the Houses of the Legislature.

Your Committee finds that under the present methods of the Legislature it is very easy for the two-thirds vote to be recorded without very great care being exercised to see that it was actually obtained and it finds further that popular legislators rarely have any difficulty in obtaining a two-thirds vote, irrespective of party



lines. It therefore believes that the protection suggested in the accompanying bill will be much more effective in obtaining the desired end and will still leave the Houses of the Legislature under the control of the majority required by ordinary parliamentary procedure.

Very respectfully submitted,

HENRY L. STIMSON,

*Chairman.*



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 45

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#### FINAL REPORT OF THE NEW YORK STATE CONSTITUTIONAL CONVENTION COMMISSION

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AUGUST 28, 1915

Mr. M. J. O'Brien, from the Constitutional Convention Commission, presented the following report:

*To the Delegates of the Constitutional Convention of the State of New York:*

GENTLEMEN:— The Constitutional Convention Commission appointed pursuant to an act of the Legislature (Laws of 1914, chapter 261) to collect, compile and print information and data for the Constitutional Convention of 1915, herewith respectfully submits its final report.

The first work of the Commission was devoted to determining the character of the information which would be most useful to the delegates and which could be obtained within the amount appropriated for the expenses of the Commission.

In its report to the Convention under date of May 19th, 1915 (Document No. 6), the Commission set forth fully the ten publications which it planned to supply to the Delegates, and it is a source of satisfaction to the Commission that it is now able to

report that all these publications have been completed and distributed to the Delegates together with an additional report on "The Relation of the State to the City School System" which is included in the publication "City and County Government"—"Special Topics."

Of all these publications one thousand copies were printed, except Publication No. 6 which is a complete text of the New York State Constitution, as amended to January 1, 1915, containing ample margins, wide spaces between the lines and alternate blank pages of which publication only five hundred copies were printed. After supplying the Delegates and those applying, who it was thought were entitled to copies, including one hundred and twenty copies of Publication No. 8 furnished the Westchester County Research Bureau, and two hundred and fifty copies of Publication No. 3 furnished the Legislative Drafting Research Fund of Columbia University, which bodies so ably assisted the Commission in the work of these publications, there are now left about six hundred and fifty copies of most of the publications. The Commission now suggests, subject to the approval of this Convention, that the remaining copies be distributed in the following manner: First, to all Law Libraries and Public Libraries of the cities of the State; second, to all the leading Universities of the country and, third, the remaining copies, if any, to the State Public Libraries throughout the United States. In this way, the valuable information contained in these publications will be preserved for all time and will always be readily accessible.

The amount originally appropriated for the use of the Commission was ten thousand dollars to which amount five thousand dollars was added by subsequent legislation, together with ten thousand dollars granted by resolution of this Convention, making a total of twenty-five thousand dollars at the disposal of the Commission for the expenses of its publications.

Annexed hereto is a financial statement showing the manner in which the above mentioned amount has been expended. From this statement it will appear that the Commission has kept well within the total amount appropriated and has at present a balance remaining on hand. This statement is respectfully submitted to

this Convention for its approval, and the Commission also requests that the Convention authorize the distribution of the remaining copies of the publications in the manner heretofore mentioned.

The Commission takes this occasion to acknowledge its indebtedness to all the individuals, public officers and bodies who have so generously co-operated in furnishing the data and information for the various publications and, in addition to the acknowledgments made by the Commission, to publicly express its appreciation of all this invaluable assistance.

The Commission, therefore, respectfully requests that the Convention adopt the resolution submitted herewith, thanking those who have contributed to the publications which have been prepared and supplied to the Delegates of this Convention and which we trust have been of service.

Respectfully submitted,

MORGAN J. O'BRIEN,

*Chairman.*

*Commission:*

MORGAN J. O'BRIEN, *Chairman,*

ROBERT F. WAGNER,

EDWARD SCHOENECK,

THADDEUS C. SWEET,

SAMSON LACHMAN,

JOHN H. FINLEY.

# NEW YORK STATE CONSTITUTIONAL CONVENTION COMMISSION. FINANCIAL STATEMENT, AUGUST, 1915

Expenditures made from the sum of \$15,000 appropriated by Laws 1914, chapters 261 and 530, and by Laws 1915, chapter 201, for material relating to the State in general.

## Publication No. 1

Lincoln's Constitutional History, 181 sets at	
\$9.50 per set.....	\$1,717 50

## Publication No. 2

New York State Constitution Annotated, Parts  
I and II

Printing 1,000 copies.....	1,051 50
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Printing 250 extra copies of Part II.....	\$62 50
Binding 250 extra copies of Part II in paper covers .....	5 00
Wrapping and mailing Part II.....	15 00
Binding 1,000 copies, Parts I and II, to- gether in black imitation flexible leather..	300 00

## Publication No. 3

## Subject Index Digest of State Constitutions

Legislative Drafting Research Fund.....	1,000 00
Printing 1,000 copies.....	3,295 50
Binding 1,000 copies in imitation flexible leather .....	300 00
30 sets of galley proof.....	120 00

## Publication No. 4

## Government of the State of New York

Binding 300 copies in imitation flexible leather .....	51 00
Printing and binding 700 additional copies.	700 00

## Publication No 5

## Revision of the State Constitution

Academy of Political Science.....	1,000 00
Binding 150 copies, Parts I and II to- gether in paper covers.....	22 50
Binding 850 copies, Parts I and II sepa- rately in flexible leather.....	510 00
Boxing 300 sets of Publications Nos. 4 and 5 and delivering 170 sets.....	64 00

## Publication No. 6

## Interleaved State Constitution

Printing 500 copies, binding 200 copies in flexible leather and 150 copies in paper..	600 00
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## Publication No. 9

Constitution and Government of the State of  
New York — An Appraisal

Bureau of Municipal Research.....	733 85
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Printing title page, letter of transmittal and binding 100 copies in flexible leather....	\$308 84
Proportionate share of secretary's salary...	720 00
Expended under secretary's direction for preparation of copy for Publications Nos. 2 and 6, proof-reading, etc., stenographic and typewriting work, clerical work in connection with secretary's office, and stamps .....	1,317 34
J. B. Lyon Co. for printing stationery, circular letters, etc.....	85 77
Thorpe's Constitutions, etc., 5 sets.....	10 50
Newspaper clippings .....	15 00
Dougherty's Constitutional History, 10 copies .....	25 00
Secretary's future expenses (estimated)....	50 00
Future transportation charges for delivering publications (estimated) .....	400 00
<b>Total.....</b>	<b>\$14,482 80</b>

Expenditures made from the sum of \$10,000 appropriated by Laws 1915, chapter 624, for material relating to city and county government.

#### Publication No. 7

##### Government of the City of New York

Academy of Political Science.....	\$750 00
Binding 1,000 copies.....	300 00

#### Publication No. 8

##### County Government of New York

Printing 1,000 copies.....	2,359 43
Binding 1,000 copies in flexible leather....	300 00

#### Publication No. 10

##### City and County Government

##### 1. Monroe County

Printing 1,200 copies.....	156 14
Printing 200 copies in paper.....	2 00

2. City of Rochester	
Printing 1,200 copies.....	\$278 55
Binding 200 copies in paper.....	2 00
3. Nassau County	
Printing 1,200 copies.....	263 30
Binding 200 copies in paper.....	2 00
4. Relation of State to City School System	
Printing 1,200 copies.....	212 51
Binding 200 copies in paper.....	2 00
Binding 1,000 copies of above 4 pamphlets in flexible leather and printing title page	303 56
Proof reading on city and county publica- tions.....	29 25
Proportionate share of secretary's salary..	480 00
J. B. Lyon Co., boxing and handling 1,000 copies of Government of City of New York.....	60 00
Bureau of Municipal Research	
Cost of services in connection with the prep- aration of the report on the Organiza- tion and Functions of the Government of the City of New York.....	2,111 11
Cost of services in connection with the prep- aration of the report on the Revenues and Expenditures of the Government of the City of New York for the five years, 1910-1914.....	1,363 77
Total.....	<u>\$8,975 62</u>



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 46

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#### MINORITY REPORT OF THE COMMITTEE ON LEGISLATIVE ORGANIZATION, RELATIVE TO PROPOSED AMENDMENT NO. 836 (INT. NO. 722)

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AUGUST 28, 1915

Mr. Burkan presented the following minority report on Proposed amendment No. 836 (Int. No. 722).

#### *To the Convention:*

The undersigned respectfully dissent from the report of the majority recommending the adoption, among others, in Article III, Section 4, of the following provisions, to wit: "No county shall have more than one-third of all the Senators, and no counties as now organized wholly contained within the limits of a single city, shall have more than one-half of all the Senators."

This proposal extends the existing limitations upon the legislative representation of but two adjoining counties to all the counties embraced within a city.

The object sought to be accomplished by this proposal is to limit the representation of the city of New York in the Senate to not more than one-half of all the Senators, however large and

increasing its population, and without regard to the number of counties within its boundaries. While New York city is not definitely named in the proposal, obviously it can only apply to the city of New York, as there is no other city which, within the next twenty years, is likely to come within its purview. The proposal denies to the people of the city of New York their rightful representation in the State government; it deprives them of an equality of representation in the Legislature. The practical operation of these provisions requires that every Senator in New York city shall represent a much larger population than the average of Senators from other sections of the State, for they prevent the city of New York, regardless of population, from electing a majority of the State Legislature. Thus a minority of the electorate of the State controls the State government, dominates its policies and is enabled to enact oppressive legislation affecting even the purely local affairs of the city. The reasons advanced for the extension of the limitation are that it will prevent the city with its preponderance in population from dominating the entire state, controlling State affairs and committing sectional oppression. We are persuaded that the proposal is inspired rather by a partisan desire to continue the control of the Legislature in the hands of the political party dominant in the rural sections of the State, and to perpetuate the present oppressive control and interference in matters purely of local city concern.

It was suggested in the debate before the Convention on the proposal to strike out the present limitation of New York city representation in the Legislature that the grievance of the city against legislative dominance and interference in local concerns would be corrected by complete, full and adequate "Home Rule".

The "Home Rule" article advanced to third reading signally fails to accomplish this object. The provision of the "Home Rule" article permitting the Legislature by joint resolution to nullify any charter or important amendment thereto adopted by the city, throws the most important local problems of the city into the mill of State politics.

Respectfully submitted,

(Signed) A. E. SMITH,  
NATHAN BURKAN.

Dated August 27, 1915.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 47

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#### REPORT OF COMMITTEE ON CIVIL SERVICE RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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AUGUST 31, 1915

Mr. Rhees from the Committee on Civil Service presented the following report:

#### REPORT OF COMMITTEE ON CIVIL SERVICE

The Committee on Civil Service to which the following Proposed constitutional amendments were referred, to wit:

- Introductory No. 29, introduced by Mr. Olcott.
- Introductory No. 53, introduced by Mr. Dunmore.
- Introductory No. 77, introduced by Mr. Phillips.
- Introductory No. 136, introduced by Mr. Unger.
- Introductory No. 138, introduced by Mr. Quigg.
- Introductory No. 142, introduced by Mr. Steinbrink (by request).
- Introductory No. 237, introduced by Mr. Donovan.
- Introductory No. 263, introduced by Mr. Heyman.
- Introductory No. 281, introduced by Mr. Adams.
- Introductory No. 284, introduced by Mr. Mann.
- Introductory No. 351, introduced by Mr. Wood.
- Introductory No. 427, introduced by Mr. C. Nicoll.
- Introductory No. 508, introduced by Mr. Quigg.

Introductory No. 528, introduced by Mr. Steinbrink (by request).

Introductory No. 614, introduced by Mr. Weed.

Introductory No. 641, introduced by Mr. McKean (by request).

Introductory No. 642, introduced by Mr. McKean (by request).

Introductory No. 657, introduced by Mr. Rhees (by request).

Introductory No. 658, introduced by Mr. Rhees (by request).

report adversely upon the same.

The committee has held public hearings on the different proposals submitted and listened also to several State and municipal officials of extensive experience in the administration of the civil service. The committee has also received many letters and voluminous petitions both in favor of and in opposition to the various proposals referred to and has formed its conclusion after extended and careful consideration.

The proposals submitted to the committee advocate the extension of civil service preference either in appointment, or in promotion, or retention, or in all of these, to veterans of the Spanish American War, to all honorably discharged soldiers, sailors and marines of the Army and Navy of the United States who enlisted from this State, to honorably discharged members of the National Guard and Naval Militia of this State, to exempt volunteer firemen, to all employees in the classified service of ten years experience in the employment of the State; and the extension to all civil servants of the right of trial and court review before removal from the service.

The information submitted to the committee indicates that there are at present over fifteen thousand employees in the classified service of the State and in addition about fifty-three thousand in the civil divisions thereof, a total of sixty-eight thousand places in the classified civil service. We are informed that there are some twenty-five thousand Spanish War veterans resident in the State, that there are approximately two hundred thousand volunteer firemen, that there are about thirty thousand honorably discharged members of the National Guard and Naval Militia in the State. Concerning the number of soldiers, sailors and marines honorably discharged from the Army and Navy of the United States who reside in this State we have no information. These proposed preferred groups are nearly four times as many in number as there are places in the classified public service.

Against the granting of any such preference in the civil service we have received strong protests from many heads of departments in the State government and from mayors and department heads of many of the cities of the State, as well as from superintendents of State and municipal institutions. All these men have had experience in making appointments in the civil service, some of them for many years. With one voice they protest that preference for special classes works disaster to the morals, the discipline and the efficiency of the office for which they are responsible.

These facts have convinced the majority of your committee that no change should be recommended in the present form of the civil service section of the Constitution.

The dissatisfaction with the existing provisions which prevails in the minds of some advocates of a more thorough application of the merit system in the civil service, is due we believe to failures in administration, not to inadequacy of the constitutional mandate.

To insure a clearer recognition of the need for consistent and faithful administration of the laws enacted to enforce that mandate of the Constitution, your committee has recommended that the Civil Service Commission be made a constitutional department of government, and the recommendation has been incorporated in the amendment proposed by the Committee on Governor and other State officers.

The committee has been actuated throughout by a strong desire to reinforce the merit system in the administration of the civil service. That desire has led us after careful consideration of all proposals to report adversely to any change in the broad and comprehensive language of section nine of Article V.

Respectfully submitted,

(Signed) RUSH RHEES,  
SAMUEL K. PHILLIPS,  
GEO. W. WICKERSHAM,  
CHARLES M. DOW,  
JAMES L. NIXON,  
HOMER E. A. DICK,  
ANDREW P. McKEAN,  
E. CLARENCE AIKEN,  
FRANCIS A. WINSLOW.

The unanimous testimony presented to the committee by heads of State and city departments was to the effect that any further exemptions from the civil provisions of the Constitution would be detrimental to the efficiency of the civil service.

For that reason I am compelled to unite in the recommendation of the committee that no amendment should be made to section nine of Article V of the Constitution.

(Signed) ISRAEL T. DEYO.

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In my opinion the Constitution should contain provision for the continuance of the merit system, but should be free from any reference to preferences, leaving such matters entirely to legislative enactment. I am personally in favor of granting to war veterans preference in appointment only, but such preference should be extended only to those whose marks upon civil service examination are above a certain minimum, which minimum should be higher than the minimum required for passing the examination. In other words, if the minimum percentage requisite to admission to the civil service list is 75 per cent., any veteran who has received for example, 85 per cent. or more, shall be preferred in appointment over all others, even though such others may have received a higher standing. There is no reason why public offices should be filled by those whose attainments are mediocre and it would be far better for the State to adopt a system of pensions than to have its work poorly done by incompetent public servants. Probably it would be cheaper in the end. However, by adopting a rule which would raise the standard as above specified, so far as veterans are concerned, a method of reward would be achieved without an impairment of the civil service. This, however, should not be included in any constitutional enactment but left to the Legislature, and I therefore concur in the finding of the majority of the Committee.

(Signed) MARK EISNER.

Mr. Mann presented the following minority report :

With a great respect for the judgment of the majority of the Committee on Civil Service, and a proper regard for its opinion, the undersigned, a minority of the Committee on Civil Service, find themselves unable to agree in all respects with such majority, and present, as a minority report, the following :

I. We believe that there is no reason in logic or justice why there should not be accorded to the Spanish-American War Veterans, if not the same, certainly some of the privileges given to veterans of the Civil War. The patriotic motives of those who enlisted in the Union army in the Civil War inspired those who enlisted in the Spanish-American War. In our judgment, the efficiency of the Civil Service would be strengthened by the training which a military experience necessarily gives; and a recognition of patriotic sacrifice will go far toward providing an incentive for similar service on the part of the youth of our land, should the emergency arise.

We, therefore, urge the passage of amendment, Printed No. 630, Int. No. 614, hereto annexed.

FRANK MANN,  
JOHN W. WEED,  
W. T. DUNMORE.

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II. In addition to the foregoing, we submit that to make the Civil Service, in fact (as well as in theory) one of merit and fitness, no loophole should exist for political advantage or unjust preferment therein. The Legislature should have power to enact laws compelling the appointment of the candidate who procures the highest standing in competitive examinations, which power is denied to it in the case of People, etc., v. Mosher, 163 N. Y. 32. Else the Civil Service Article may be made to defeat its very purpose, which purpose is the substitution of merit for political availability, and of fitness for nepotism. So, too, provision should be made fully to protect Civil Service employees

from arbitrary removal, or the political change of competitive positions to the exempt class.

III. The Civil Service of the State should, so far as practicable, be from among residents of the State. "New York for New Yorkers" is a maxim that can find its best application in the Civil Service. We know of no reason why the State or municipality should be permitted to support a horde of foreign dependents who draw salaries from the State of New York to expend such salaries in the development of other States. It is unjust and uneconomical that our already overburdened taxpayers should indirectly be compelled to contribute to the revenues of such other states. It is difficult enough, in these times of fiscal stress, to meet the exactions of our own Excelsior State extravagance. Besides, it must be patent that a Civil Service employee will be most efficient in the service of his home State, the welfare of which is a vital financial and social concern to him and his.

Therefore, We additionally recommend that (a) provisions be made permitting the Legislature to compel the appointment of the fittest candidate; (b) that safeguards be thrown about Civil Service employees to save them from unjust removal or "ripper" legislation; and (c) a preference be given to residents of this State in appointment and promotion; or should that be inexpedient, that only residents of the State be employed in its Civil Service.

ALBERT BLOGG UNGER,  
EUGENE LAMB RICHARDS.



# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 48

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#### MINORITY REPORT OF THE COMMITTEE ON BILL OF RIGHTS RELATIVE TO PROPOSED AMENDMENT TO ARTICLE I, SECTION 5

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SEPTEMBER 1, 1915

Mr. Reeves reported the following:

The undersigned, members of the Committee on Bill of Rights, respectfully submit the following minority report to the amendment proposed by that Committee to Article one, Section five, which proposed amendment reads as follows: "On a conviction for a crime now punishable by death, the jury may by its verdict impose either the death penalty or life imprisonment and, in the latter event, no pardon or commutation shall be granted unless the innocence of the person convicted be established." In our opinion, no change should be made in the Constitution on this subject for the following reasons among others:

(1) The matter is purely legislative and not constitutional. If the proposed amendment were placed in our fundamental law for the next twenty years and found to be detrimental to the people of the state, it would become a great calamity. The states of this country have not, generally, dealt with this subject in their constitutions.

(2) There is no apparent demand for such a change. The general feeling, as we understand it, is that the administration of the criminal law should be strengthened wherever possible and not weakened by provisions which might encourage crime.

(3) The proposed amendment involves a rule of men and not of law. It would not be fair to juries to place upon them a responsibility which fairly and logically belongs to the state. The jury should determine the guilt, but the state, by its law, should fix the punishment. The reverse of this will cause discord in the jury room and lead to many disagreements that otherwise would not occur and will cause a lack of uniformity in punishment.

(4) The proposed amendment is, in effect, an attempt to abolish capital punishment: for few, if any, juries will inflict the death penalty if they can avoid the responsibility.

(5) The City of Greater New York, with its varied and rapidly changing population, is the last place in the world in which to try such an experiment.

(6) We believe that a certain death penalty is the greatest deterrent against murder and that it is the duty of this Convention to conserve the safety of those who otherwise might be victims of that crime. If the retention of the death penalty will cause the murders in this state to be any less in number than they otherwise would be, it should be retained. The practically unanimous testimony of those who are charged with the administration of the criminal law is that, in their opinion, this retention would have that effect.

Dated, Albany, N. Y., August —, 1915.

Respectfully submitted,

MORGAN J. O'BRIEN,  
J. G. SCHURMAN,  
GEORGE A. BUNCE,  
ALFRED G. REEVES,  
FRANCIS MARTIN.





# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 49

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#### REPORT OF THE COMMITTEE ON MILITIA AND MILITARY AFFAIRS, RELATIVE TO THE SEVERAL PROPOSED AMENDMENTS

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SEPTEMBER 2, 1915

Mr. Latson, from the Committee on Militia and Military Affairs, presented the following report:

Your Committee on Militia and Military Affairs has retained under consideration several proposed amendments and begs to submit this, its final report.

Printed No. 266, by Mr. Heyman.

Printed No. 439, by Mr. C. Nicoll.

The purpose of these bills was to accord certain Civil Service recognition to members of the National Guard, who had received or might be entitled to receive a full and honorable discharge. Your Committee favor this proposition, and it has been commended by all commanding officers of the National Guard who appeared before your Committee. The prevailing opinion has been, however, to the effect that while such a measure would be

meritorious and just, it is a matter more properly for consideration by the Legislature than for Constitutional enactment.

Printed No. 675, by Mr. Tuck.

This proposed amendment contemplates compulsory military service. There has been a strong desire on the part of your Committee to devise and offer some affirmative suggestion designed to awaken a greater interest in military matters and to impress upon our community the necessity now so earnestly urged upon us from many quarters.

For example, it has been suggested that all males between the ages of eighteen and twenty-one, who receive scholarships from the Department of Education, should, in return, obligate themselves to devote an appropriate share of their time to military training.

Again, it has been suggested that in our Educational Article, a provision might wisely be inserted to the effect that our system of public education include some teaching in military science. This would have a marked effect upon the coming generation and, if carried into our evening schools, its influence would be felt upon many now available for military service.

All such suggestions, however, including the provision for compulsory military service would seem properly within the scope of legislation and it has been deemed unwise to embody any such mandatory provisions in the Constitution.

Printed No. 452, by Mr. Coles.

Printed No. 544, by Mr. Bayes.

Your Committee has been very earnestly requested to report one or the other of these proposed amendments, particularly in view of the fact that provisions of a similar nature are to be found in former Constitutions of this State.

Your Committee direct attention to the language of our present Constitution on this subject which recognizes "such exemptions as are now or may be hereafter created by the laws of the United States or by the Legislature of this State." The Military Law of this State specifically prescribes that all persons exempt from

military service under the laws of the United States shall be exempt in this State. Congress has declared an express exemption in this regard by the Act of January 21, 1903. The exemption there provided, thus controls both the State Constitution and the State Military Law.

These proposed amendments have been under consideration by the Committee on Bill of Rights, as well as by your Committee on Militia and Military Affairs. Both Committees recognize and approve the underlying principle of religious toleration for which these amendments stand, but regard their enactment as unnecessary in view of the existing provisions of Constitutional and Statute Law above quoted.

Printed No. 435, by Mr. Curran.

This bill has likewise been under consideration jointly by your Committee on Militia and Military Affairs, and your Committee on Bill of Rights. A difference of opinion has developed. While the Committee on Bill of Rights have reported this measure favorably with a slight change in phrasology, your Committee on Militia and Military Affairs disapprove the same. There are many civilians employed to accompany a military force. All such civilians are subject to Articles of War and regulations governing the military forces. They are triable by Courts Martial. To deny Military Courts this jurisdiction would substantially destroy discipline. This is true with reference to civilian teamsters, civilian clerks, civilian mechanics, civilian farriers, civilian hostlers and many others who are as much a part of the military force for the purpose of its mission as are the officers and soldiers who constitute its military personnel. There are many military offenses which do not constitute a crime under the provisions of our penal law, and it would be difficult to determine how such offenses could be dealt with, if the jurisdiction of disciplinary courts were removed.

Respectfully submitted,

ALMET R. LATSON,  
*Chairman.*





# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 50

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#### ADDRESS OF PRESIDENT ELIHU ROOT IN THE COMMITTEE OF THE WHOLE ON THE SHORT BALLOT AMENDMENT

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AUGUST 30, 1915.

Mr. Root — Mr. Chairman.

The Chairman — Mr. Root.

Mr. Root — I have had great doubt whether or not I should impose any remarks on this bill upon the Convention, especially after my friend Mr. Quigg has so ingeniously made it difficult for me to speak; but I have been so long deeply interested in the subject of the bill, and I shall have so few opportunities hereafter, perhaps never another, that I cannot refrain from testifying to my faith in the principles of government which underlie the measure, and putting upon this record for whatever it may be worth the conclusions which I have reached upon the teachings of long experience in many

positions, through many years of participation in the public affairs of this State and in observation of them.

I wish, in the first place, to say something suggested by the question of my friend, Mr. Brackett, as to where this short ballot idea came from. It came up out of the dark, he says.

Let us see. In 1910, Governor Hughes, in his annual message, said this to the Legislature of the State: "There should be a reduction in the number of elective offices. The ends of democracy will be better attained to the extent that the attention of the voters may be focused upon comparatively few offices, the incumbents of which can be strictly accountable for administration. This will tend to promote efficiency in public office by increasing the effectiveness of the voter and by diminishing the opportunities of political manipulators who take advantage of the multiplicity of elective offices to perfect their schemes at the public expense. I am in favor of as few elective offices as may be consistent with proper accountability to the people, and a short ballot. It would be an improvement, I believe, in state administration if the executive responsibility was centered in the governor, who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state offices."

Following that message from Governor Hughes, to whom the people of this State look with respect and honor, a resolution for the amendment to the Constitution was introduced in the Assembly of 1910. That resolution provided for the appointment of all State officers, except the Governor and the Lieutenant-Governor.

There was a hot contest upon the floor. Speaker Wadsworth, "Young Jim," came down from the Speaker's chair to advocate the measure, and Jesse Phillips, sitting before me, voted for it. And so, in the practical affairs of this State, the movement out of which this bill came had its start upon the floor of the State Legislature.

Hughes and Wadsworth, one drawing from his experience as Governor and the other upon his observations of public affairs, from the desk of the Speaker of the Assembly, were its sponsors.

Time passed, and in 1912 the movement had gained such headway among the people of the State that the Republican Convention of that year declared its adherence to the principle of the short ballot, and the Progressive Convention, in framing their platform, under which 200,000 — it is safe, is it not, to say 200,000 — of the Republican voters of the State followed Roosevelt as their leader, rather than Taft. The Progressive Convention, in framing that platform, declared: "We favor the short ballot principle and appropriate constitutional amendments."

So two parties, and all branches of the Republican party at least, committed themselves to the position that Hughes and Wadsworth took, in the Assembly of 1910.

In 1913, after the great defeat of 1912, when the Republicans of the State were seeking to bring back to their support the multitudes that had gone off with the Progressive movement, when they were seeking to offer a program of constructive forward movement in which the Republican party should be the leader, Republicans met in a great mass meeting in the city of New York, on the 5th of December of that year, 1913.

Nine hundred and seventy Republicans were there from all parts of the State. It was a crisis in the affairs of the Republican party. The party must commend itself to the people of the State, or it was gone. Twenty-eight members of this Convention were there, and in that meeting, free to all, open to full discussion, after amendments had been offered, discussed and voted upon, this resolution was adopted:

“Whereas, this practice (referring to the long ballot) is also in violation of the best principles of organization which require that the governor, who under the constitution is the responsible chief executive should be so in fact, and that he should have the power to select his official agents;

“Therefore, be it Resolved that we favor the application to the State government of the principle of the Short Ballot, which is that only those offices should be elective which are important enough to attract (and deserve) public examination ”

“And be it further Resolved, that, in compliance with this principle, we urge the representatives of the Republican party of this State, in the Senate and Assembly, to support a resolution providing for the submission to the people of an amendment to the constitution, under which amendment it will be the duty of the Governor to appoint the secretary of state, the state treasurer, the comptroller, the attorney-general, and the state engineer and surveyor, leaving only the Governor and Lieutenant-Governor as elective state executive officers.”

That resolution, I say, after full discussion was unanimously adopted by the 970 representative Re-

publicans who had met there to present to the people of the State a constructive program for the party. Mr. Frederick C. Tanner is chairman of this Committee on Governor and Other State Officers to-day, because it was he who offered the resolution in that meeting that was unanimously approved by those 970 Republicans. He is executing a mandate. He is carrying out a policy. He is fulfilling a pledge to the people.

The time went on and the following winter, in the Assembly of 1914, a new resolution was introduced following the terms of this resolution of the mass meeting, following the terms of the Hughes-Wadsworth resolution of 1910, providing that all these State officers except the Governor and Lieutenant-Governor should be appointed. That resolution passed the Assembly and every Republican in the Assembly voted for it. It never came to a vote in the Senate. Voting for that resolution were four members of the Assembly, who now sit in this Convention; Mr. Bockes, Mr. Eisner, Mr. Hinman, and Mr. Mathewson.

Time passed on and in the autumn of 1914 a Republican Convention met at Saratoga; an unofficial convention, we are told. Unofficial? Negligible! Here is the law under which it was called, Section 45 of the Election Law:

“ Nothing contained in this chapter shall prevent a party from holding party conventions to be constituted in such manner and to have such powers in relation to formulating party platforms and policies and the transaction of business relating to party affairs as the rules and regulations of the party may provide, not inconsistent with the provisions of this chapter.”

That Convention was thus called more specifically and solemnly to frame a platform than any other Convention that ever met in this State, for that was its sole business. That is what it was there for, to define, to declare, to set before the people the faith and policies of the Republican party, and in that Convention there was a report from the Committee on Rules, which embodied deliberation, full discussion and mature judgment such as no report that ever came to a political convention within my experience ever had. The great mass meeting of December 5th, 1913, had directed the appointment of a Committee of Thirty to meet and consider and prepare for submission to the Convention a statement of the views of the Republican party regarding the new Constitution. That Committee was appointed; it met two or three days before the Convention in the city of Saratoga. It met in the office of my friend, Mr. Brackett, and there day after day it discussed the subject, reached and voted upon its conclusions and framed a report.

Let me say here that Senator Brackett never agreed with the Committee. He has been consistent and honest and open in the declaration of his views from first to last, but he was voted down in the Committee of Thirty. Their report favoring a short ballot, among other things, was presented to the Convention. That report was referred to the Committee on Resolutions of the Convention, a Committee of 42 members, among them were twelve members of this Convention, and that Committee on Resolutions took up the report of the Committee of Thirty and discussed it all day and they voted upon it, and again Mr. Brackett's view was voted down, and the Committee on Resolutions re-

ported to the Convention the plank in favor of the short ballot that has been read to you.

Mr. Brackett — Will the senator permit an interruption? I know you have not intentionally made a misstatement, but you will recall that a report of the Committee of Thirty was not presented to the Committee on Platform until an hour before the Convention, in the little room at the end of the piazza — before the Convention met.

The President — It is a fact, and that room was the scene of excited and hot controversy for a long period over the adoption of that report, which was in part adopted and in part rejected.

Mr. Brackett — If you will pardon a suggestion, you said for a long period. It was, I think, about an hour and a half.

Mr. Deyo — Will the gentleman give way? I think that lasted until the following day.

Mr. Root — It did.

Now, when it came to the Convention, there was no doubt about the subject we were talking on. The temporary chairman of the Convention had said to the Convention, “The reflections which arise from considering the relations of the Executive and the Legislature lead inevitably to another field of reform in State Government. That is, the adoption of the short ballot. That is demanded both for the efficiency of our electoral system and for the efficiency of government after election.” And then, after stating the first, he proceeded: “The most obvious step toward simplifying the ballot in this State is to have the heads

of executive departments appointed by the Governor, etc. Still more important would be the effect of such a change upon the efficiency of government. The most important thing in constituting a government is to unite responsibility with power, so that a certain known person may be definitely responsible for what ought to be done; to be rewarded if he does it, punished if he does not do it, and that the person held responsible shall have the power to do the thing. Under our system we have divided executive power among many separately elected heads of departments, and we have thus obscured responsibility, because in the complicated affairs of our government it is hard for the best informed to know who is to be blamed, or who is to be praised, who ought to be rewarded and who punished. At the same time that the Governor is empowered to appoint the heads of executive departments and made responsible for their conduct, there ought to be a general reorganization of the executive branch of our government."

After that, Mr. Chairman, came the report of the Committee on Resolutions, and Mr. Brackett submitted a minority report, taking substantially the position which he has taken here. That minority report was read, and it was argued at length. Amendments were offered and discussed. Mr. Brackett, I repeat, was heard at length upon it, in what he then called the "great council of the party," and he was beaten; beaten fighting manfully for his opinions, but he was beaten. The Republican party went to the people at the coming election upon the declaration that it was in favor of applying the principle of the short ballot to the selection of executive officers.



Now, let me turn to the other side of the story. When the resolution for the short ballot, simon-pure, making all the State officers but the Governor and Lieutenant-Governor appointive, was before the Assembly in 1914, Mr. A. E. Smith, the member of this Convention whose attractive personality has so impressed itself upon every member, moved an amendment to limit the change to appointment of the Secretary of State, State Engineer and Surveyor and State Treasurer, leaving the Comptroller and Attorney-General elective. Upon that amendment the Democrats of the Assembly stood, voting with him. When the Democratic convention met in that autumn they put themselves on Mr. Smith's platform, approved his action and that of the Democrats in the Assembly and declared in favor of exactly what he called for in his amendment—the election of the Comptroller and the Attorney-General and the appointment of all the other officers.

So you have this movement, not coming up out of the dark, but begun by a great Governor and advocated by a great Speaker, both of whom have received the approval of their country, one by being elevated to the bench of the Supreme Court of the United States and the other to the Senate of the United States. You have the movement progressing step by step until it has received the almost universal assent, the final and decisive action of the party to which that Governor and that Speaker belong, repeated over and over and over again, fully thought out and discussed; and you have the other party accepting the principle, agreeing to the application of it, with the exception of the Comptroller and the Attorney-General.

Now, we must vote according to our consciences. We are not bound — no legislative body is bound legally

by a platform. But, Mr. Chairman, if there is faith in parties, if there is ever to be a party platform put out again, to which a man can subscribe or for which he can vote without a sense of futility, without a sense of being engaged in a confidence game; if all the declarations of principle by political parties are not to be regarded as false pretense, as humbug, as a parcel of lies, we must stand by the principles upon which we were all elected to this Convention. There is one thing, and, in so far as I know, only one thing, that the vast majority of us have assured the people who elected us we would do in this Convention, and that is that we would stand by the position of Hughes and Wadsworth. I, for one, am going to do it. If I form a correct judgment of the self-respecting men of this Convention, it will be with a great company that I do it. But, Mr. Chairman, don't let us rest on that. Why was it that these conventions, one after another, four of them, declared to the people that they were for the principle of this bill? In the first place, our knowledge of human nature shows us that the thousands of experienced men in these conventions and meetings had come to the conclusion that that principle met with the opinion of the people of the State. It is all very well for Mr. Quigg to tell us what the men he met in Columbia county said, for Mr. Green to write letters to his friends in Binghamton, but 970 men in that mass meeting on the 5th of December told you what their observation was, that they would commend their party to the people of this State by declaring this principle. A thousand and odd men in the Republican conventions of 1912, 1913 and 1914 have given proof conclusive of what their observation of public opinion was. A thou-

sand and odd men in the Democratic convention of 1914 have given proof conclusive of what their observation of public opinion was. Conventions don't put planks in platforms to drive away votes.

Again I ask, why was it that they thought that these principles would commend their tickets to the people of the State? Why was it that the people of the State had given evidence to these thousands of experienced men in the politics of the State that those principles would be popular? Well, of course, you cannot escape the conclusion that it was because the people of the State found something wrong about the government of the State. My friend, Mr. Brackett, sees nothing wrong about it. He has been for fifteen years in the Senate; I suppose he could have stayed there as long as he wanted to. He is honored and respected and has his own way in Saratoga county. Why should he see anything wrong? My friend, Mr. Green, is comfortably settled in the Excise Department, and he sees nothing wrong. Mr. Chairman, there never was a reform in administration in this world which did not have to make its way against the strong feeling of good, honest men, concerned in existing methods of administration, and who saw nothing wrong. Never! It is no impeachment to a man's honesty, his integrity, that he thinks the methods that he is familiar with and in which he is engaged are all right. But you cannot make any improvement in this world without overriding the satisfaction that men have in the things as they are, and of which they are a contented and successful part. I say that the growth, extension, general acceptance of this principle shows that all these experienced politicians and citizens in all these Conventions felt that the peo-

ple of the State saw something wrong in our State government, and we are here charged with a duty, not of closing our eyes, but of opening them, and seeing, if we can, what it was that was wrong.

Now, anybody can see that all these 152 outlying agencies, big and little, lying around loose, accountable to nobody, spending all the money they could get, violate every principle of economy, of efficiency, of the proper transaction of business. Everyone can see that all around us are political organizations carrying on the business of government, that have learned their lesson from the great business organizations which have been so phenomenally successful in recent years.

The governments of our cities: Why, twenty years ago, when James Bryce wrote his "American Commonwealth," the government of American cities was a by-word and a shame for Americans all over the world. Heaven be thanked, the government of our cities has now gone far toward redeeming itself and us from that disgrace, and the government of American cities today is in the main far superior to the government of American States. I challenge contradiction to that statement. How has it been reached? How have our cities been lifted up from the low grade of incompetency and corruption on which they stood when the "American Commonwealth" was written? It has been done by applying the principles of this bill to city government, by giving power to the men elected by the people to do the things for which they were elected. So I say it is quite plain that that is not all. It is not all.

I am going to discuss a subject now that goes back to the beginning of the political life of the oldest man

in this Convention, and one to which we cannot close our eyes, if we keep the obligations of our oath. We talk about the government of the Constitution. We have spent many days in discussing the powers of this and that and the other officer. What is the government of this State? What has it been during the forty years of my acquaintance with it? The government of the Constitution? Oh, no; not half the time, or half way. When I ask what do the people find wrong in our State government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party. It goes on to the public feeling of resentment against the control of party organizations, of both parties and of all parties.

Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system. From the days of Fenton, and Conkling, and Arthur and Cornell, and Platt, from the days of David B. Hill, down to the present time the government of the State has presented two different lines of activity, one of the constitutional and statutory officers of the State, and the other of the party leaders,—they call them party bosses. They call the system—I don't coin the phrase, I adopt it because it carries its own meaning—the system they call “invisible government”. For I don't remember how many years, Mr. Conkling was the supreme ruler in this State; the Governor did not count, the legislatures did not count; comptrollers and secretaries of state and what not, did not count. It was what Mr. Conkling said, and in a great outburst of public rage he was pulled down.

Then Mr. Platt ruled the State; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr. Platt. And the capitol was not here; it was at 49 Broadway; Mr. Platt and his lieutenants. It makes no difference what name you give, whether you call it Fenton or Conkling or Cornell or Arthur or Platt, or by the names of men now living. The ruler of the State during the greater part of the forty years of my acquaintance with the State government has not been any man authorized by the Constitution or by the law, and, sir, there is throughout the length and breadth of this State a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing. The party leader is elected by no one, accountable to no one, bound by no oath of office, removable by no one. Ah! My friends here have talked about this bill's creating an autocracy. The word points with admirable facility the very opposite reason for the bill. It is to destroy autocracy and restore power so far as may be to the men elected by the people, accountable to the people, removable by the people. I don't criticise the men of the invisible government. How can I? I have known them all, and among them have been some of my dearest friends. I can never forget the deep sense of indignation that I felt in the abuse that was heaped upon Chester A. Arthur, whom I honored and loved, when he was attacked because he held the position of political leader. But it is all wrong. It is all wrong that a government not authorized by the people should be continued superior to the government that is authorized by the people.

How is it accomplished? How is it done? Mr.

Chairman, it is done by the use of patronage, and the patronage that my friends on the other side of this question have been arguing and pleading for in this Convention is the power to continue that invisible government against that authorized by the people. Everywhere, sir, that these two systems of government co-exist, there is a conflict day by day, and year by year, between two principles of appointment to office, two radically opposed principles. The elected officer or the appointed officer, the lawful officer who is to be held responsible for the administration of his office, desires to get men into the different positions of his office who will do their work in a way that is creditable to him and his administration. Whether it be a president appointing a judge, or a governor appointing a superintendent of public works, whatever it may be, the officer wants to make a success, and he wants to get the man selected upon the ground of his ability to do the work.

How is it about the boss? What does the boss have to do? He has to urge the appointment of a man whose appointment will consolidate his power and preserve the organization. The invisible government proceeds to build up and maintain its power by a reversal of the fundamental principle of good government, which is that men should be selected to perform the duties of the office; and to substitute the idea that men should be appointed to office for the preservation and enhancement and power of the political leader. The one, the true one, looks upon appointment to office with a view to the service that can be given to the public. The other, the false one, looks upon appointment to office with a view to what can be

gotten out of it. Gentlemen of the Convention, I appeal to your knowledge of facts. Every one of you knows that what I say about the use of patronage under the system of invisible government is true. Louis Marshall told us the other day about the appointment of wardens in the Adirondacks, hotel keepers and people living there, to render no service whatever. They were appointed not for the service that they were to render to the State; they were appointed for the service they were to render to promote the power of a political organization. Mr. Chairman, we all know that the halls of this capitol swarm with men during the session of the Legislature on pay day. A great number, seldom here, rendering no service, are put on the payrolls as a matter of patronage, not of service, but of party patronage. Both parties are alike; all parties are alike. The system extends through all. Ah, Mr. Chairman, that system finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature there shall be opposition and discord and the playing of one force against the other, and so, when we refuse to make one Governor elected by the people the real chief executive, we make inevitable the setting up of a chief executive not selected by the people, not acting for the people's interest, but for the selfish interest of the few who control the party, whichever party it may be. Think for a moment of what this patronage system means. How many of you are there who would be willing to do to your private client, or customer, or any private trust, or to a friend or neighbor, what you see being done to the State of New York every year of your lives in the taking of money out of her treasury



without service? We can, when we are in a private station, pass on without much attention to inveterate abuses. We can say to ourselves, I know it is wrong, I wish it could be set right; it cannot be set right, I will do nothing. But here, here, we face the duty, we cannot escape it, we are bound to do our work, face to face, in clear recognition of the truth, unpalatable, deplorable as it may be, and the truth is that what the unerring instinct of the democracy of our State has seen in this government is that a different standard of morality is applied to the conduct of affairs of State than that which is applied in private affairs. I have been told forty times since this Convention met that you cannot change it. We can try, can't we? I deny that we cannot change it. I repel that cynical assumption which is born of the lethargy that comes from poisoned air during all these years. I assert that this perversion of democracy, this robbing democracy of its virility, can be changed as truly as the system under which Walpole governed the commons of England, by bribery, as truly as the atmosphere which made the *credit mobilier* scandal possible in the Congress of the United States has been blown away by the force of public opinion. We cannot change it in a moment, but we can do our share. We can take this one step toward, not robbing the people of their part in government, but toward robbing an irresponsible autocracy of its indefensible and unjust and undemocratic control of government, and restoring it to the people to be exercised by the men of their choice and their control.

Mr. Chairman, this Convention is a great event in the life of every man in this room. A body which sits but once in twenty years to deal with the fundamental

law of the State deals not only for the present but for the future, not only by its results but by its example. Opportunity knocks at the door of every man in this assemblage, an opportunity which will never come again to most of us. While millions of men are fighting and dying for their countries across the ocean, while government has become serious, sober, almost alarming in its effect upon the happiness of the lives of all that are dearest to us, it is our inestimable privilege to do something here in moving our beloved State along the pathway towards better and purer government, a more pervasive morality and a more effective exercise of the powers of government which preserve the liberty of the people. When you go back to your homes and review the record of the summer, you will find in it a cause for your children and your children's children, who will review the Convention of 1915 as we have been reviewing the work of the preceding Conventions, to say, my father, my grandfather, helped to do this work for our State.

Mr. Chairman, there is a plain old house in the Oneida hills, overlooking the valley of the Mohawk, where truth and honor dwelt in my youth. When I go back, as I am about to go, to spend my declining years, I mean to go with the feeling that I have not failed to speak and to act here in accordance with the lessons I learned there from the God of my fathers. God grant that this opportunity for service to our country and our State may not be neglected by any of the men for whom I feel so deep a friendship in this Convention.

# STATE OF NEW YORK

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## IN CONVENTION

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### DOCUMENT

No. 51

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REPORT OF COMMITTEE ON REVISION AND  
ENGROSSMENT, PURSUANT TO THE RULES OF  
THE CONVENTION AND RESOLUTIONS ADOPTED  
SEPTEMBER 4, 1915, PRESENTING THE PRESENT  
CONSTITUTION OF THE STATE WITH THE  
AMENDMENTS THERETO ADOPTED BY THE  
CONVENTION, PROPERLY INSERTED, WITH SUCH  
CHANGES AS THE COMMITTEE DEEMED IT  
ADVISABLE TO INCORPORATE THEREIN

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SEPTEMBER 9, 1915

*To the Convention:*

Since the recess of the convention on September fourth the Committee on Revision and Engrossment has been engaged in preparing a draft of the present constitution of the state and in inserting therein the amendments adopted by this convention.

The draft prepared by the committee has been compared with the original draft of the constitution of 1894 on deposit in the state library and with the engrossed copies of the amendments signed by the president of this convention.

Upon this draft as a basis the committee has proceeded to make such changes as were necessary to incorporate the amendments adopted by this convention and to make such alterations as were necessary to make the language of the constitution consistent and uniform.

The committee found that the constitution of 1894, as adopted, abounded in the use of capitals, while the amendments made thereto during the past twenty years are almost entirely devoid of capitals.

The committee has adopted the style of the amendments made to the constitution since 1894 as the more modern method of capitalization and has made the capitalization throughout the constitution uniform.

As this change can not possibly affect the substance of the constitution, it seems unnecessary to refer specifically to any of these changes.

The punctuation of the existing constitution is more profuse than that which is now employed, but the committee has not deemed it wise to change the punctuation of the un-amended portions of the constitution of 1894, although it has not hesitated to strike out or insert commas in any of the amendments made by this convention where such a change could not affect the meaning of the provisions.

In the following instances commas have been omitted:

Page 8, line 24, after the word "meetings";

Page 9, line 35, after the word "apportionment";

Page 9, line 36, after the word "senator";

Page 9, line 37, after the word "senator";

Page 9, line 37, after the word "senators";

Page 10, line 32, after the word "supervisors";

Page 10, line 32, after the word "or";

Page 11, line 23, after the word "district";

Page 11, line 24, after the word "which";

Page 11, line 25, after the word "districts";

Page 11, line 33, after the word "time";

Page 11, line 33, after the word "towns";

Page 11, line 37, after the word "legislature";

Page 11, line 37, after the word "body";

Page 11, line 41, after the word "apportionment";

Page 17, line 34, after the word "time";

Page 24, line 35, after the word "powers";

Page 25, line 27, after the word "treasurer";

Page 25, line 29, after the word "office";

Page 43, line 40, after the word "of";

Page 43, line 40, after the word "exceed";

Page 43, line 41, after the word "courts";

Page 65, line 18, after the word "ability";

Page 65, line 29, after the word "vote".

In the following instances commas have been inserted:

Page 3, line 4, after the word "referee";

Page 7, line 36, after the word "enumeration";

Page 36, line 8, after the word "may";

Page 45, line 6, after the word "twenty-two";

Page 65, line 18, after the dash "—".

In the following instances the punctuation has been changed:

Page 2, line 28, following the word "years" the apostrophe (') has been omitted.

The semicolons appearing in section 19, page 14, lines 10 to 35, inclusive, following the respective clauses take the place of periods which were improperly used in the constitution of 1894.

Pages 22 and 23, article six, the paragraphs relating to the civil departments are numbered for convenience in reference from one to seventeen, respectively, to correspond with the numbering appearing in section one of such article.

The word "said" appears quite commonly in the present constitution and in the amendments made during the past twenty years, while in the amendments proposed by this convention the word "such" has generally been used in place thereof.

The committee regards the word "such" as the preferable term, although in a few instances the word "said" has been preserved.

In the following instances the word "such" has been substituted for the word "said":

Page 5, line 12; page 5, line 14; page 9, line 23; page 11, line 26; page 12, line 1; page 14, line 6; page 14, line 23; page 30, line 27; page 30, line 34; page 37, line 23; page 41, line 33; page 41, line 41; page 44, line 2; page 44, line 23; page 48, line 25; page 48, line 39; page 49, line 3; page 49, line 4; page 53, line 30; page 54, line 9; page 54, line 29; page 54, line 31; page 54, line 35; page 54, line 39; page 56, line 13; page 56, line 13; page 57, line 23; page 57, line 24; page 57, line 28; page 69, line 17.

The expressions "the state" and "this state" occur throughout the constitution. The committee has not made the expression

uniform, because it found that there was an appropriateness in most cases in using the particular form that was employed.

Likewise the expressions "the constitution" and "this constitution" appear without any discrimination in their use. The committee, with one or two exceptions, has made the reference to the constitution read "this constitution".

In the following instances this has been done:

Page 56, line 21; page 57, line 7; page 59, line 7; page 59, line 9; page 67, line 19; page 67, line 31; page 68, line 13; page 68, line 40.

In amendments adopted by this convention the word "electors" has been substituted for the word "voters". The word "voters" however occurs in two instances in the existing constitution, and in these cases it has been changed to the word "electors" to make the use of terms for the same subject uniform. This change has been made in the following instances: Page 8, line 14, and page 8, line 15.

The word "people" has been changed to the word "electors" at page 51, line 37, the former word being plainly erroneously used.

The words "constitute a quorum" which is the expression commonly employed, have been used in place of the words "form a quorum". (See page 33, line 31; page 34, line 10.)

Where the salary of an officer is specified the expression "annual salary" has been employed instead of the expression a specified salary "per year", in order to make the language in this respect uniform. (See page 37, lines 1 and 2.)

The prevailing expression used in the constitution in designating the month and the day of the month is, for instance, "the first day of January" and not "January first". The former expression has been used in the proposed draft of the constitution for the sake of uniformity. It seems unnecessary to call attention to these changes in detail.

Likewise, the prevailing expression in designating the year is, for instance, "one thousand nine hundred and fifteen" and not "nineteen hundred and fifteen". The latter has been used in the recent amendments made to the constitution of 1894, but the committee feels that in a formal document like the constitution of the state it is well to follow the expression "one thousand nine hun-

dred and fifteen ” instead of the less formal expression “ nineteen hundred and fifteen ”.

The expression “ yeas and nays ” is the predominant one in the constitution in reference to voting in that manner and in the only instance where “ ayes and noes ” appears the expression has been changed to “ yeas and nays ”. (See page 46, line 12.)

The spelling of the word “ moneys ” which in one instance is spelled “ m-o-n-i-e-s ” has been made to read “ m-o-n-e-y-s ” where it appears in the constitution. (See page 20, line 37.)

The word “ residue ” as applied to the unexpired term of an office where a vacancy occurs has been changed to “ remainder ”, which is used in nearly all instances in the present constitution. (See page 12, line 30 ; page 40, line 6.)

In view of the change in the language of the constitution relating to the enumeration of the inhabitants of the state which will not require such an enumeration except where a federal census is not available, it became necessary to change the language of the constitution in some places.

For instance, on page 7, line 35, the word “ state ” has been stricken out and the remainder of the line after the word “ enumeration ”, and all before the word “ electors ” on line 36, and after the word “ preceding ” the words “ federal or state census ” have been inserted ”, so that the sentence will read “ In cities and villages having five thousand inhabitants or more, according to the last preceding federal or state census or enumeration ”, etc., and on page 28, line 15, after the word “ every ” there has been inserted the words “ federal census or state ” and there has been stricken out on line 16, the words “ under the constitution, of the inhabitants of the state ” so that the sentence will read “ The legislature may alter the judicial districts once after every federal census or state enumeration,” etc. Page 28, line 23, the words “ state, or ” have been omitted and the words “ or state ”, have been inserted after the word “ federal ”, so as to make the language uniform with the change made in a preceding part of the same section, and on page 28, line 26, the words “ state or ” have been stricken out and after the word “ federal ” have been inserted the words “ or state ” for a like reason.

Page 28, line 20, the letter “ s ” is added to the word “ district ”.

Page 63, line 15, insert after the word “ latest ” the words

“ federal or ” and after the word “ state ” the words “ census or ” so that the sentence will read “ All cities are classified according to the latest federal or state census or enumeration ”.

The committee has not in all instances brought the parts of verbs together, but an exception has been made on page thirteen in section ten, on account of the wide separation of the verb “ may convene ”, and has eliminated the word “ may ” from line one and inserted it before the word “ convene ” in line four. Likewise after the word “ assembly ” in line six the word “ may ” has been eliminated and inserted before the word “ convene ” in line eight.

On page 15, line 35, a reference appears to article seven of the existing constitution. On account of the renumbering of the articles it has been necessary to change this reference to “ nine ”; and in order to make the reference specific it has also been necessary to add after the word “ constitution ” the words “ or section four of former article seven thereof as in force on the first day of January, one thousand nine hundred and ten.”

On page 17, line 26, the word “ political ” has been changed to “ civil ”, and again on line 28, to make the expression correspond with the usual term employed in the remainder of the constitution.

Page 21, lines 30 and 31, the words “ and the comptroller ” have been stricken out and the comma after the word “ governor ” and the word “ and ” has been inserted after the word “ governor ”, because the comptroller has been made the head of one of the departments of the state government.

Page 22, line 37, after the word “ the ” the words “ head of the ” have been inserted and the words “ administered by ” have been stricken out to make the expression uniform with the other subdivisions of section 2 in designating the head of the department.

Page 33, line 15, the word “ whom ” has been changed to “ which ” to correct an obvious grammatical error.

Page 20, line 11, the word “ their ” has been changed to “ its ”, to correct a grammatical error.

Page 41, line 12, after the word “ sessions ” the words “ in and ” have been inserted to perfect the reference to the “ court of general sessions in and for the city and county of New York ” which is the name of the existing court.

Page 48, line 39, and page 49, line 1, the words “ state commission of highways ” have been stricken out and the words “ super-



intendent of public works" have been inserted in their stead, because under this constitution the superintendent of public works has charge of the highways of the state.

Page 49, line 4, change the word "it" to "he".

Page 51, line 24, the word "ten" has been stricken out and the word "thirteen" inserted to correct a reference, which is made necessary by the renumbering of articles.

Page 59, line 2, the word "supplying" has been stricken out and the word "filling" inserted in its place to correct a bad use of English.

Page 62, lines 27 to 31, the language relating to the adoption of new charters by cities was confused, and the committee has inserted in line 29 a comma after "seventeen", and in line 30 a comma after "provide" and after the word "thereafter" the words "either at the general or at a special election", so that the sentence will read "At the general election in the year one thousand nine hundred and seventeen, and unless its charter after one revision thereof shall otherwise provide, in every eighth year thereafter either at the general or at a special election, every city shall submit to the electors thereof, the question "Shall there be a commission to revise the charter of the city?"

Page 67, line 26, the word "each" has been changed to the word "such", to correct an obvious error.

Page 69, line 22, the word "nine" has been changed to the word "seven" to correct the reference made necessary by the renumbering of the articles.

On page 69, line 26, the words "such" and "seven" have been stricken out, and on line 27 the words "as amended" and there have been inserted after the word "article" the words "nine of this constitution".

Page 68, line 5, the words "next ensuing after" have been stricken out and the word "following" has been inserted.

Page 45, line 13, the letter "s" is added to the word "office".

The committee found it necessary by reason of the creation of new articles and new sections to renumber the articles and sections in some instances. These changes appear in the schedule which is attached to this report, so that it is not deemed necessary to call attention to them specifically.

All of the references in the proposed constitution have been checked up and are believed to be correct.

All the changes reported by the committee, it is believed, come within the power of the committee to correct inaccuracies and inconsistencies. The committee has made no intentional change of substance.

Accompanying this report is a draft of the present constitution incorporating all of the amendments made by this convention and embodying all of the changes above indicated. This draft of the constitution is preceded by an index of the articles giving the subject of each and is followed by a schedule showing the source of the various articles of the proposed constitution, the distribution of the sections of the present constitution and also the source of the sections of the proposed constitution marked Schedules A, B and C.

In pursuance of the rules of the convention and the resolutions adopted by the convention, the committee has directed the preparation of an original draft of the proposed constitution on parchment and also has under preparation copies from the original plates which will be suitably bound and delivered to the members of the convention as soon as it can be done.

The list of articles preceding the draft of the constitution and the schedules following it have been submitted merely for the convenience of the members of the convention and form no part of the original draft of the constitution reported by the committee.

We desire to express our appreciation for the valuable services of Mr. Benton S. Rude, the parliamentary draftsman attached to the committee, and to George W. Munson, its stenographer, and also for faithful services of Charles H. Clark, who has been in the service of the committee during the past few weeks, and to Frederick D. Colson and John T. Fitzpatrick, who have assisted the committee in the reading of the proofs.

Respectfully submitted,

ADOLPH J. RODENBECK,

*Chairman*

LEMUEL E. QUIGG,

WILLIAM S. OSTRANDER,

CHARLES H. BETTS,

WILLIAM R. BAYES,

HARRY W. NEWBURGER,

TIMOTHY A. LEARY.

*Committee.*

# STATE OF NEW YORK

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# IN CONVENTION

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## DOCUMENT

No. 52

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THE PRESENT CONSTITUTION OF THE STATE OF  
NEW YORK, WITH THE AMENDMENTS THERETO,  
ADOPTED BY THE CONVENTION OF 1915, PROPERLY  
INSERTED, REPORTED BY THE COMMITTEE ON  
REVISION AND ENGROSSMENT PURSUANT TO THE  
RULES OF THE CONVENTION AND RESOLUTIONS  
ADOPTED SEPTEMBER 4, 1915

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### INDEX TO ARTICLES

No.	Subject	No.	Subject
I.	Civil rights.	XI.	Corporations; municipal debts; boards and commissions.
II.	Elective franchise.	XII.	Education.
III.	Legislature.	XIII.	Officers generally.
IV.	Executive.	XIV.	Military.
V.	Appropriations and budget.	XV.	Cities and villages.
VI.	State departments.	XVI.	Official corruption.
VII.	Conservation.	XVII.	Constitutional amendments.
VIII.	Judiciary.	XVIII.	Time of taking effect.
IX.	State debts.		
X.	Taxation.		

We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

### ARTICLE I.

Section 1. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Section 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Section 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Section 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Section 6. Except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature, no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. Any person may, however, in the manner prescribed by law after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years imprisonment, or of an indictable misdemeanor, all subsequent proceedings being had by information before a superior court of criminal jurisdiction or a judge or justice thereof. In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions, and in any criminal case shall have the right to at least one appeal. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor be denied the equal protection of the laws; nor shall private property be taken for public use without just compensation.

Section 7. (a) When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by the supreme court without a jury, but not with a referee, or by one or more supreme court commissioners or, within the third and fourth judicial departments and such part of the second judicial department not within the city of New York by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Where the proceedings are instituted by a civil division of the state, compensation shall be paid before such taking, unless the supreme court, after hearing, because of public necessity shall otherwise direct.

(b) Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

(c) General laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dikes upon the lands of others, under proper restrictions on making just compensation, which shall be assessed against the property benefited thereby.

(d) The legislature may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased. The legislature may also authorize cities, for the establishment of a uniform system of streets, to take real property within an abandoned street or highway and to sell and lease it.

Section 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the

jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Section 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

Section 10. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

Section 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Section 12. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Section 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Section 14. All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

Section 15. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid unless made under the authority, and with the consent of the legislature. The peacemakers' courts of the Tonawanda nation, the peacemakers' courts and surrogates' courts of the Seneca nation and all other agencies of the Indian tribes and nations in so far as they exercise judicial

functions are hereby abolished, and their jurisdiction shall vest in the courts of the state. All actions and proceedings now pending in such courts and agencies of the Indian nations and tribes shall be transferred for determination to the proper courts of the state. Except as otherwise provided by the treaties of this state and the constitution, treaties and laws of the United States, all general laws of the state, now or hereafter in force, shall apply to all Indians within the state. The legislature shall provide for the preservation of the judicial records of the Indian tribes and nations.

Section 16. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of such colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of such colony, and of the convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Section 17. All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Section 18. Except in the cases provided for in the next section, the right of action now existing to recover damages for injuries resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitation.

Section 19. Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to or occupational diseases of employees or for death of employees resulting from such injuries or diseases without regard to fault as a cause thereof, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or providing that the right to such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for such injuries or diseases or death. But all moneys paid by an employer, by reason of the enactment of any of the laws herein authorized, shall be deemed a part of the cost of operating the business of the employer.

## ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

Section 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to



contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum, or institution wholly or partly supported at public expense, or by charity; nor while confined in any public prison.

Section 4. Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration, which shall be completed at least fifteen days before each general election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding federal or state census or enumeration, electors shall be registered upon personal application only. Laws may be made providing for special registration therein on personal application before such boards or officers as the legislature shall designate, on a day or days not more than five months prior to the day of election, of such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the

county during each of the regular days of registration. Such laws shall require electors so specially registered to establish, on the first regular day of registration, their continued right to vote in the election district for which they were registered but shall not require further personal appearance. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of electors.

Section 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Section 6. All laws creating, regulating or affecting boards or officers charged with the duty of registering electors, or of distributing ballots at the polls to electors, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of such parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town meetings or to village elections.

### ARTICLE III.

Section 1. The legislative power of this state shall be vested in the senate and assembly.

Section 2. The senate shall consist of fifty members except as hereinafter provided. They shall be chosen for two years. The assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

Section 3. The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive. The senate districts shall remain as at present constituted until altered as hereinafter provided.

Section 4. Such senate districts shall be so altered by the legislature at the first regular session after the return of and based upon the state enumeration taken in the year one thousand nine

hundred and fifteen and shall remain unaltered until altered as hereinafter provided. At the regular session of the legislature in the year after the tabulation of each federal census the senate districts shall be altered by the legislature. Senate districts altered as herein provided shall remain unaltered until the time herein appointed for another alteration. Provided, however, that if a federal census shall not be available for any such alteration the same shall be based upon an enumeration of the inhabitants of the state, excluding aliens, and the legislature shall provide for such an enumeration for that purpose. In making such alterations the legislature shall so provide that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable and shall, at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two, or more, senate districts wholly in such county.

No town and no block in a city inclosed by streets or public ways shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make such districts most nearly equal in number of inhabitants, excluding aliens. No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as organized on the first day of January, one thousand eight hundred and ninety-five, which are adjoining counties or which are separated only by public waters shall have more than one-half of all the senators. The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

Section 5. The members of the assembly shall be chosen by single districts and shall be apportioned by the legislature at the first regular session after the return of the state enumeration taken

in the year one thousand nine hundred and fifteen among the several counties of the state. At the regular session of the legislature in each year in which senate districts shall be altered such members of the assembly shall again be apportioned by the legislature. Apportionments of members of assembly shall remain unaltered until the time herein appointed for another apportionment thereof. Every apportionment of members among the several counties of the state shall be as nearly as may be according to the number of their respective inhabitants, excluding aliens.

Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton until the population of the county of Hamilton shall, according to the ratio, entitle it to a member.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment which shall be made as follows: one member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

In any county entitled to more than one member, the board of supervisors or if there be none, the board or body exercising similar functions, and in any city embracing an entire county, or more than one county, and having no board of supervisors, the members elected from each county to the board of aldermen or if there be none, the body most nearly exercising the powers of a board of aldermen shall assemble on the second Tuesday of June, one thousand nine hundred and sixteen, and at such other times as the legislature thereafter making an apportionment, as hereinafter provided, shall prescribe, and divide each county into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly

within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding state enumeration, or if no state enumeration shall have been taken within a period of five years prior to such apportionment, then according to the preceding federal census; and such apportionment and districts shall remain unaltered until another federal census shall be made. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district than the population of a town or block therein adjoining such assembly district. Towns or blocks which from their location may be included in either of two assembly districts shall be so placed as to make such assembly districts most nearly equal in number of inhabitants, excluding aliens. But in the division of cities except cities of the first class under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of one thousand nine hundred and fifteen, so far as may be, instead of blocks. Nothing in this section shall prevent the division at any time of counties and towns and the erection of new counties and towns by the legislature. Assembly districts as at present constituted shall remain unaltered until altered as herein provided.

An apportionment by the legislature or other body shall be subject to review by the supreme court at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment shall give precedence thereto over all

other causes and proceedings, and if such court be not in session it shall convene promptly for the disposition of the same.

Section 6. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

Section 7. The political year and legislative term shall begin on the first day of January; and the legislature shall, every year, assemble on the first Wednesday in January.

Section 8. Each member of the legislature shall receive for his services an annual salary of two thousand five hundred dollars. The members of each house shall also receive the railroad fare actually paid in going to and returning from their place of meeting on the most usual route, but not oftener than once each week during any session of the legislature. Such railroad fare shall be repaid only on the verified voucher of the member entitled thereto after audit by the comptroller. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Section 9. A majority of the members elected to each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings and be the judge of the elections, returns and qualifications of its own members and shall choose its own officers. The senate shall choose a temporary president. The assembly shall choose a speaker. If the lieutenant-governor become governor, the temporary president shall become lieutenant-governor for the remainder of the term. If the lieutenant-governor be impeached or be unable to discharge the duties of the office or be acting governor, the temporary president shall act as lieutenant-governor during such impeachment or inability or while the lieutenant-governor is acting governor. If the lieutenant-governor refuse to act as president or be absent from the chair, the temporary president shall preside. If the speaker of the assembly be unable to perform the duties of the office or be acting governor, the assembly may choose a temporary speaker who shall act as speaker during such inability or while the speaker is acting governor or until a speaker is chosen.

Section 10. The legislature of its own motion, in the manner to be provided by joint rule which shall continue in force until abrogated or amended by both the senate and the assembly, may convene to take action in the matter of removal of a judge of the court of appeals or justice of the supreme court. The assembly of its own motion, in the manner to be provided by rule which shall continue in force until abrogated or amended by the assembly, may convene for the purposes of impeachment. At a meeting under this section no subject shall be acted upon except that for which the meeting is herein authorized to be held.

Section 11. If any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Section 12. Each house shall keep a journal of its proceedings and a record of its debates and promptly publish the same from day to day, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Section 13. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

Section 14. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

Section 15. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows:" and no law shall be enacted except by bill.

Section 16. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage. No bill shall be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature. Immediately after the last reading of a bill the question upon its final passage shall be taken and the yeas and nays entered on the journal.

Section 17. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

Section 18. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of such act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

Section 19. The legislature shall not pass a private or local bill in any of the following cases:

- Changing the names of persons;

- Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands;

- Locating or changing county seats;

- Providing for changes of venue in civil or criminal cases;

- Incorporating villages;

- Providing for election of members of boards of supervisors;

- Selecting, drawing, summoning or empaneling grand or petit jurors;

- Regulating the rate of interest on money;

- The opening and conducting of elections or designating places of voting;

- Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which such officers are elected or appointed;

- Granting to any corporation, association or individual the right to prove a claim against the state or against any civil division thereof;

- Authorizing any civil division of the state to allow or pay any claim or account;

- Granting to any corporation, association or individual the right to lay down railroad tracks;

- Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever;

- Granting to any person, association, firm or corporation an exemption from taxation on real or personal property;

- Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its



judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

Section 20. The legislature shall neither audit nor allow any private claim or account against the state or against any civil division thereof, but may appropriate money to pay such claims and accounts against the state as shall have been audited and allowed according to law.

Section 21. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

No public moneys or property shall be appropriated for the construction or improvement of any building, bridge, highway, dike, canal, feeder, waterway or other work until plans and estimates of the cost of such work shall have been filed with the secretary of state by the superintendent of public works, together with a certificate by him as to whether or not in his judgment the general interests of the state then require that such improvement be made at state expense. This section shall not apply to the contributions of the state to the cost of eliminating grade crossings or to items in the budget for the construction of highways from the proceeds of bonds authorized under section four of article nine of this constitution or section four of former article seven thereof as in force on the first day of January, one thousand nine hundred and ten.

Section 22. No money shall ever be paid out of the treasury of this state or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made not later than three months after the close

of the fiscal year next succeeding that in which such appropriation was made; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. Appropriations made by the legislature in the year one thousand nine hundred and sixteen shall be made for a period ending the thirtieth day of June, one thousand nine hundred and seventeen, and thereafter the fiscal year of the state shall end on the thirtieth day of June of each year, unless otherwise provided by law.

Section 23. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Section 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Section 25. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city. Provided, however, that the legislature, by general laws, may establish different forms of government for counties not wholly included in a city, any such form of government to become effective in any county only when approved by the electors thereof in such manner as the legislature may prescribe.

No local or special law relating to a county or counties except to a county or counties wholly included within a city shall be enacted except upon request, by resolution, of the governing body of the county or counties to be affected.

Section 26. The legislature shall, by general laws, confer upon the boards of supervisors, or other governing bodies, of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem

expedient. In counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, the legislature may confer such powers upon such auditors, or fiscal officers, as the legislature may, from time to time, deem expedient. The legislature may confer upon any elective or appointive county officer or officers any of the powers and duties now exercised by the towns of any county or the officer or officers thereof relating to highways, public safety and the care of the poor.

Section 27. No extra compensation shall be granted or allowed to any public officer, servant, agent or contractor, by the state or any civil division thereof or by any board, officer or other agency of the state, or of any such civil division.

Section 28. The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails and reformatories in the state; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work while under sentence thereto at any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any civil division thereof, or for or to any public institution owned or managed and controlled by the state, or any civil division thereof.

Section 29. The legislature shall have the power to regulate or prohibit manufacturing in tenement houses.

#### ARTICLE IV.

Section 1. The executive power shall be vested in a governor, who shall hold his office for two years. A lieutenant-governor shall be chosen at the same time and for the same term. The governor shall receive for his services an annual salary of ten thousand dollars until the first day of January, one thousand nine hundred and seventeen, after which he shall receive for his services an annual salary of twenty thousand dollars. There shall

be provided for his use a suitable and furnished executive residence.

Section 2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this state.

Section 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant-governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature at its next annual session shall forthwith, by joint ballot, choose one of such persons so having an equal and the highest number of votes for governor or lieutenant-governor.

Section 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration. He shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed.

Section 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Section 6. If the office of governor be vacant the lieutenant-governor shall become governor for the remainder of the term. If the governor be under impeachment or be unable to discharge the powers and duties of the office or be absent from the state the lieutenant-governor shall act as governor during such inability, absence or the pendency of such impeachment. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

Section 7. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If the office of governor be vacant and there be no lieutenant-governor, such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in any such case, until the vacancy be filled by election, the temporary president of the senate, or if there be none, the speaker of the assembly shall become governor until the first day of the political year next succeeding the election at which the office of governor shall be filled. If the office of governor be vacant and the lieutenant-governor be under impeachment, or unable to discharge the powers and duties of the office of governor or be absent from the state, the temporary president of the senate shall act as governor during such inability, absence or the pendency of such impeachment. If the temporary president of the senate be unable to discharge the powers and duties of the office of governor or be absent from the state the speaker of the assembly shall act as governor during such inability or absence.

Section 8. The lieutenant-governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the constitution or by law.

Section 9. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds

of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections to the other house by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by its adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

## ARTICLE V.

Section 1. On or before the fifteenth day of November in the year one thousand nine hundred and sixteen and in each year thereafter the head of each department of the state government except the legislature and judiciary, shall submit to the governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the legislature, classified according to relative importance and in such form and with such explanation as the governor may require.

The governor, after public hearing thereon, at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment.

Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper.

On or before the first day of February next succeeding he shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations, clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus or deficit of revenues at the end of the current fiscal year together with the measures of taxation, if any, which the governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the state; statements of the debts and funds of the state; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year; and a statement of revenues and expenditures for the two fiscal years next preceding said year, in form suitable for comparison. The governor may, before final action by the legislature thereon, amend or supplement the budget.

A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the governor to the comptroller.

The governor and the heads of such departments shall have the right, and it shall be their duty when requested by either house of the legislature, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein; but this provision shall not apply to items for the legislature or judiciary. Such a bill when passed by both houses shall be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary shall be subject to his approval as provided in section nine of article four.

Neither house shall consider further appropriations until the appropriation bills proposed by the governor shall have been finally acted on by both houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the governor's approval as provided in section nine of article four. Nothing herein contained shall be construed to prevent the governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of government.

## ARTICLE VI.

Section 1. There shall be the following civil departments in the state government: (1) law, (2) finance, (3) accounts, (4) treasury, (5) taxation, (6) state, (7) public works, (8) health, (9) agriculture, (10) charities and corrections, (11) banking, (12) insurance, (13) labor and industry, (14) education, (15) public utilities, (16) conservation and (17) civil service.

Section 2. (1) The head of the department of law shall be the attorney-general. He shall be elected at the same time and for the same term as the governor.

(2) The head of the department of finance shall be the comptroller. He shall be elected at the same time and for the same term as the governor. Excepting the powers of examination and verification of accounts vested in the department of accounts, he shall have the present powers and duties of the comptroller, subject to the authority of the legislature to increase, modify or diminish the same.

(3) The head of the department of accounts shall be the commissioner of accounts. He shall have power to examine and verify all accounts showing the financial transactions of the state and its several departments and officers. He shall also make such special examinations and reports as from time to time may be required by resolution of either house of the legislature.

(4) The head of the department of the treasury shall be the treasurer.

(5) The head of the department of taxation shall be a state tax commission.

(6) The head of the department of state shall be the secretary of state. He shall be the keeper of the great seal and of the records and archives of the state, shall issue writs of election and certify the results.



(7) The head of the department of public works shall be the superintendent of public works. He shall have the construction, care, maintenance and operation of the state's public works, including canals, highways, and all public buildings not from time to time assigned by law to any other department, and shall provide for the needs of the several state departments in engineering and architecture.

(8) The head of the department of health shall be the commissioner of health.

(9) The head of the department of agriculture shall be the commissioner of agriculture.

(10) The head of the department of charities and corrections shall be the secretary of charities and corrections. He shall have power of inspection and supervision of all state charitable institutions, state hospitals for the insane, state prisons and other state correctional institutions.

(11) The head of the department of banking shall be the superintendent of banks.

(12) The head of the department of insurance shall be the superintendent of insurance.

(13) The head of the department of labor and industry shall be an industrial commission or commissioner as may be provided by law. Commissioners shall be appointed by the governor by and with the advice and consent of the senate.

(14) The department of education shall be administered by the university of the state of New York. The chief administrative officer of the department shall be appointed by the regents of the university.

(15) The department of public utilities shall consist of two public service commissions. Commissioners shall be appointed by the governor by and with the advice and consent of the senate. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the legislature shall otherwise provide, the existing commissions are continued with the jurisdiction and powers at present vested in them.

(16) The department of conservation shall be under the direction of the conservation commission.

(17) The department of civil service shall be under the direction of a civil service commission consisting of three commissioners. They shall be appointed by the governor by and with the advice

and consent of the senate, for terms of six years, and shall be so classified that one shall go out of office at the end of every two years. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. The commission shall take care that the provisions of this constitution relating to civil service and of laws enacted thereunder are faithfully observed and enforced.

Section 3. At the session immediately following the adoption of this constitution, the legislature shall provide by law for the appropriate assignment, to take effect not earlier than the first day of January, one thousand nine hundred and seventeen, of all the civil administrative and executive functions of the state government, except those of assistants in the office of the governor, to the several departments in this article provided. Subject to the limitations contained in this constitution the legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions continued or created under this constitution, and increase, modify or diminish their powers and functions. No specific grant of power herein to a department shall prevent the legislature from conferring additional powers upon such department. No new departments shall be created hereafter. Any bureau, board, commission or office hereafter created except assistants in the office of the governor shall be placed in one of the departments enumerated in this article. The elective state officers in office at the time this constitution takes effect shall continue in office until the end of the terms for which they were elected. Pending the assignment of the civil administrative and executive functions by the legislature pursuant to the direction of this section, the powers and duties of the several departments, boards, commissions and offices now existing are continued. Subject to the power of the legislature to reduce the number of officers, when the powers and duties of any existing office are assigned to any department, the officers exercising such powers shall continue in office in such department, and their term of office shall not be shortened by such assignment.

Section 4. The heads of all the departments and the members of all commissions unless otherwise provided in this constitution shall be appointed by the governor and may be removed by him in his discretion.

Section 5. The attorney-general and comptroller may be removed from office by impeachment in the same manner as the governor. A vacancy in the office of attorney-general or of comptroller shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs. Until the vacancy be so filled by election, the governor, or if the senate be in session, the governor by and with the advice and consent of the senate, may fill such vacancy by appointment which shall continue until the first day of the political year next succeeding the election at which such office may be filled. The compensation provided by law for each of such officers shall not be increased or diminished during the term for which he shall have been elected and he shall not receive to his use any fees or perquisites of office or other compensation.

Section 6. All appointed heads of departments shall be subject to impeachment in the same manner as the governor or they may be removed by the senate by vote of two-thirds of all the members elected thereto. A vacancy occurring in a board or commission appointed by and with the advice and consent of the senate for a fixed term shall be filled for the unexpired term in the same manner as an original appointment, except that a vacancy occurring or existing while the senate is not in session shall be filled by the governor by appointment for a term expiring at the end of twenty days from the commencement of the next meeting of the senate.

Section 7. The lieutenant-governor, speaker of the assembly, secretary of state, attorney-general, comptroller, treasurer and superintendent of public works shall constitute the canal board and be the commissioners of the land office and the commissioners of the canal fund.

Section 8. This article shall not apply to the military or naval affairs or forces nor to property from time to time devoted to military or naval purposes.

## ARTICLE VII.

Section 1. The department of conservation shall consist of nine commissioners to serve without compensation and to be appointed by the governor by and with the advice and consent of the senate for terms which shall expire in nine successive years, the first ending on the first day of January, one thousand nine hundred and

seventeen, and their successors shall be appointed for terms of nine years. Vacancies shall be filled for the unexpired term. One commissioner shall reside in each judicial district. No person shall be eligible to or shall continue to hold the office of commissioner, who is engaged in the business of lumbering in any forest preserve county or who is engaged in any business in the prosecution of which hydraulic power is used or in which water is distributed or sold under any public franchise or who is an officer or holder of the stock or bonds of any corporation engaged in such business within the state. They shall be subject to removal by the governor on charges, after an opportunity to be heard. Subject to the limitations in this constitution contained, the department shall be charged with the development and protection of the natural resources of the state; the encouragement of forestry and the suppression of forest fires throughout the state; the exclusive care, maintenance and administration of the forest preserve; the conservation, prevention of pollution, and regulation of the waters of the state; the protection and propagation of its fish, birds, game, shellfish and crustacea, except migratory fish of the sea within the limits of the marine district, with the power, subject to the veto within thirty days of the governor, to enact regulations with respect to the taking, possession, sale and transportation thereof, which shall have the force of law, when filed in the office of the department of state and published as the legislature may provide, until and unless the legislature shall thereafter modify such regulations. The department shall also be entrusted with the enforcement of the general laws of the state respecting the subjects hereinbefore enumerated and exercise such additional powers as from time to time may be conferred by law. The department shall appoint and may at pleasure remove a superintendent. It may also appoint all other necessary subordinates.

Section 2. The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the trees and timber thereon be sold, removed or destroyed. The department is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes

of reforestation and fire protection solely, but shall not sell the same. Nothing herein contained shall prevent the state from constructing a state highway from Saranac Lake in Franklin county to Long Lake in Hamilton county and thence to Old Forge in Herkimer county by way of Blue Mountain lake and Raquette lake.

Section 3. The legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, for the canals of the state and to regulate the flow of streams. Such reservoirs shall be constructed, owned and controlled by the state, but such work shall not be undertaken until after the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the state and the legislature shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered, which shall be fixed for terms of not exceeding ten years, and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works.

Section 4. The legislature may authorize the use by the city of New York for its municipal water supply of lands now belonging to the state located in the towns of Hurley and Shandaken in the county of Ulster and in the town of Lexington in the county of Greene, for just compensation.

Section 5. The legislature shall annually make provision for the purchase of real property within the Adirondack and Catskill parks as defined by law, the reforestation of lands and the making of boundary and valuation surveys.

Section 6. A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.

## ARTICLE VIII.

Section 1. The supreme court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed as hereinafter provided. The supreme court shall consist of the justices in office on the first day of January, one thousand nine hundred and sixteen, and successors of the three justices transferred to the court of appeals as in this article provided, and of two additional justices who shall reside in and be chosen by the electors of the first judicial district, and their successors, together with such additional justices as may be authorized by the legislature pursuant to the provisions of this article. The successors of said justices shall be chosen by the electors of their respective judicial districts. The legislature may alter the judicial districts once after every federal census or state enumeration and thereupon reapportion the justices to be thereafter elected in the districts so altered. The legislature may from time to time further increase the number of justices in any judicial district except that the number of justices in the first, second and ninth districts shall not be thereby increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last federal or state census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last federal or state census or enumeration.

Section 2. The present division of the state into four judicial departments is continued. Once every ten years the legislature may alter the judicial departments, but without increasing the number thereof. They shall be bounded by county lines, and be compact and equal in population as nearly as may be. The appellate divisions of the supreme court are continued and shall consist of not less than ten nor more than twelve justices in the first department, seven justices in the second department and five justices in each of the other departments. The justices heretofore designated shall continue to sit in the appellate divisions until the terms of their designations respectively expire. The appellate division in the first department may sit in two parts, in which case the

presiding justice shall assign the justices who from time to time shall sit in each part. The presiding justice may preside in either part and he shall designate the justice to preside in either part when he is not present. In each appellate division or part thereof four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

The governor shall designate the presiding justice of each department, who shall act as such during his term of office and shall be a resident of the department. The other justices shall be designated by the governor from all the justices elected to the supreme court for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of the designations expire, or vacancies occur, the governor shall make new designations. A majority of the justices so designated to sit in the appellate division, in each department shall be residents of the department. Ten justices shall be designated to sit in the appellate division in the first department, but in case the presiding justice thereof at any time shall certify to the governor that the interests of justice so require the governor shall designate two additional justices to sit therein. In case of the absence or inability to act of a justice of any appellate division, the presiding justice thereof may assign any of the justices of the supreme court to sit in the appellate division during such absence or inability, but no justice shall be so designated to sit longer than four months in any year. In case the presiding justice of any appellate division shall certify to the governor that one or more additional justices are needed for the speedy disposition of the business before it the governor shall designate such additional justice or justices. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears shall transfer such number of the pending appeals as the presiding justices may determine to be necessary from such department to any other department for hearing and determination. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division, or to the

hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any county or judicial district in any other department of the state. The appellate division, except as herein provided, shall have the jurisdiction now exercised by it and such additional jurisdiction as may be conferred by the legislature. On appeals from judgments of conviction in criminal cases, the appellate division or the appellate term as the case may be may reduce the sentence imposed by the trial court or judge. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding the terms of the supreme court therein, and to assign the justices in the departments to hold such terms.

Section 3. There shall be an appellate term of the supreme court in the first and in the second department consisting of not less than three nor more than five justices of the supreme court to be designated annually by the appellate division of the supreme court in such departments respectively. Such appellate divisions respectively may designate justices to sit in the appellate term during the temporary disability of any of the justices previously designated. Three shall constitute a quorum, and the concurrence of a majority of the justices sitting shall be necessary to a decision. All appeals from judgments and orders in civil cases made by county courts within such departments, and all appeals from judgments and orders made by the city court of the city of New York, the municipal court of the city of New York, the court of special sessions of the city of New York, as such courts now exist, or as hereafter consolidated or reorganized pursuant to this article, and by all other inferior local courts, except courts held by justices of the peace, city magistrates' courts, and courts of special sessions held by one city magistrate only, within such departments, shall be heard at the appellate term. The legislature may enlarge or restrict the jurisdiction of the appellate term. Appeals to the appellate division from judgments or orders of the appellate term may be taken as of right only when the appellate term on reversing or modifying a judgment makes new findings of fact and renders judgment thereon. Appeals to the appellate division also may be allowed by the proper appellate division.



Section 4. No judge or justice shall sit in the appellate term, appellate division or in the court of appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Section 5. The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the supreme court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 6. To secure a more simple, speedy and effective administration of justice, it shall be the duty of the legislature to act with all convenient speed upon the report of the board of statutory consolidation transmitted to the legislature by the governor on the twenty-first day of April, one thousand nine hundred and fifteen, and to enact a brief and simple civil practice act and to adopt a separate body of civil practice rules for the regulation of procedure in the court of appeals, supreme court and county courts. The legislature may make the civil practice rules or any part thereof applicable to such other courts as it may provide. Thereafter, from time to time, at intervals of not less than five years, the legislature may appoint a commission to consider and report what changes, if any, there should be in the law and rules governing civil procedure. The legislature shall act on the report of each such commission by a single bill, and the legislature shall not otherwise, or at any other time, enact any law prescribing, regulating or changing the civil procedure in the court of appeals, supreme court or county courts, unless the judges or justices empowered to make and amend civil practice rules shall certify that legislation is necessary.

After the adoption of the civil practice rules by the legislature under the requirements of the first paragraph of this section, the power to alter and amend such rules and to make, alter and amend civil practice rules shall vest and remain in the courts of the state to be exercised by the judges of the court of appeals and the justices of the appellate divisions of the supreme court, or by such judges or justices of the court of appeals, the supreme court and the county courts as the legislature shall provide.

Section 7. The court of claims is continued and shall be a court of record. It shall consist of the three judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors who shall be appointed by the governor by and with the advice and consent of the senate and who shall hold office for nine years. The legislature may further increase the number of judges of the court of claims by permanent or temporary appointment but not to exceed five in all. The additional judges heretofore appointed shall continue to serve until the first day of January, one thousand nine hundred and eighteen, or such earlier date as shall be determined pursuant to law. The court shall have power to appoint and remove a clerk and such court stenographers and attendants as the legislature may provide. The judges shall continue to receive from the state their present compensation and allowances until the legislature shall otherwise provide. The court shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the state or between conflicting claimants as the legislature may provide. The judges of the court may separately take testimony in relation to any claim, but no award shall be made except by a majority of the whole court. The court may establish rules to govern its own procedure.

Section 8. Supreme court commissioners may be appointed as hereinafter provided, one or more of whom may be designated by the court to determine the compensation to be paid whenever private property is taken for a public use in the judicial department or district for which they shall have been appointed, when such compensation is not made by the state, and who also may respectively be designated as referee whenever issues are properly referred for determination or report, and who shall perform such other or further duties as may be devolved upon them by special order or rule of court by the appellate division or by

the civil practice rules. The respective appellate divisions in the first and second judicial departments from time to time may appoint for each of the counties therein within the city of New York such commissioners as they deem necessary and, with the approval of the board of estimate and apportionment or its successors, fix their compensation which shall be uniform in each county and a charge against the city of New York. The legislature may at any time authorize the appointment of supreme court commissioners in the third and fourth judicial departments and in the counties in the second department not within the city of New York. Such commissioners shall be members of the bar of not less than ten years standing. They shall not practice as attorneys or counselors in any court of this state or of the United States. They shall hold office during the pleasure of the respective appellate divisions by which they shall have been appointed. Supreme court commissioners during their continuance in office shall not hold any other office or public trust.

Section 9. The court of appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the state, and of the three justices of the supreme court now serving as associate judges of the court of appeals by designation by the governor, who shall be associate judges of the court of appeals until the expiration of the terms for which they respectively were elected justices of the supreme court, and their successors who shall be chosen by the electors of the state. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. No more than seven judges shall sit in any case. Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court of appeals, during such absence or inability to act, but for a period not exceeding four months in any year. For the purpose of disposing with reasonable speed of the accumulation of causes now pending in the court of appeals, the court on or before the first day of March, one thousand nine hundred and sixteen, shall designate

not less than four nor more than six justices of the supreme court to serve as associate judges of the court of appeals until the causes pending on the calendar shall be reduced to one hundred but not later than the thirty-first day of December, one thousand nine hundred and seventeen, when they shall return to the supreme court. While serving in the court of appeals, the justices so designated shall be relieved of their duties as justices of the supreme court. During such period the court of appeals shall sit in two parts, each of which shall consist of not more than seven judges, five of whom shall constitute a quorum, the concurrence of four being necessary to a decision. The chief judge shall from time to time designate the associate judges of the court of appeals and the justices of the supreme court serving as associate judges of the court of appeals to sit in the respective parts of the court, in such manner that the justices of the supreme court so designated shall be distributed as equally as may be between the two parts. The chief judge may preside in either part, and he shall designate the judge who shall preside in either part when he is not present. The causes pending in the court of appeals shall be distributed by the chief judge as nearly equally as may be between the two parts of the court. The court of appeals shall cause a calendar of appeals pending therein to be made and published at least once in each year. Whenever on the first day of January in any year after the present accumulation of causes in the court of appeals shall have been disposed of as above provided, there shall be more than five hundred causes pending undisposed of on the calendar, the court shall in the manner above provided designate justices of the supreme court to serve as associate judges of the court of appeals, and shall sit in two parts; the pending causes shall be distributed between the parts for disposition until the number of causes pending on the calendar shall be reduced to one hundred, but not later than until the expiration of one year from the date of such designations, whereupon the justices so designated shall return to the supreme court.

In case of the death, resignation or other disability of any of the justices of the supreme court designated to serve as associate judges of the court of appeals as in this article provided, the court of appeals shall designate a justice of the supreme court to serve in his place in like manner as if originally so designated. Each of the justices of the supreme court while serving as associate judge of the court of appeals as herein provided shall receive from

the state the same compensation as the elected associate judges of the court of appeals. Upon the termination of the designation of a justice of the supreme court as associate judge of the court of appeals who when so designated was a justice of an appellate division, he shall return to such appellate division unless the term of his designation thereto shall have expired and shall not have been renewed by the governor. The appellate division may designate other justices of the supreme court to sit in the appellate division during the absence of regularly assigned justices of such division serving as associate judges of the court of appeals, in case the business of the appellate division shall render such action necessary.

Section 10. When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 11. After the last day of December, one thousand nine hundred and fifteen, the jurisdiction of the court of appeals, except where the judgment is of death, or where the appellate division on reversing or modifying a judgment makes new findings of fact and renders judgment thereon, shall be limited to the review of questions of law. Appeals may be taken as of right to the court of appeals in the following cases only:

(1) Where the judgment is of death;

(2) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding where is directly involved the con-

struction of the constitution of the state or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified;

(3) From an order of an appellate division of the supreme court granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him.

The court of appeals may, however, allow an appeal in any case where in its opinion a question of law is involved, which ought to be reviewed.

The legislature may further restrict the jurisdiction of the court of appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to appeals taken to the court of appeals before the last day of December, one thousand nine hundred and fifteen, but the judgments or orders appealed from shall be reviewed under existing provisions of law.

The court of appeals may determine the qualifications and prescribe the rules regulating the admission to practice of attorneys and counselors in the courts of the state.

Section 12. The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.

Section 13. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Section 14. No person shall hold the office of judge, justice of any court or surrogate longer than until and including the last day of December next after he shall be seventy years of age. Each

justice of the supreme court shall receive from the state an annual salary of ten thousand dollars. Those assigned to the appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and the presiding justices thereof the sum of two thousand five hundred dollars per year. The justices now in office or hereafter elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the appellate division or designated by the governor to hold a trial or special term in the first or second judicial department shall receive in addition twenty dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to such justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected. Except in the case of the consolidation of the offices of county judge and surrogate, or to make the compensation of the judges of the court of appeals equal to that of any justice of the supreme court, the compensation of a judge or justice of any court of record in the state shall be neither increased nor decreased during the term of office for which he was elected or appointed.

Section 15. The assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant-governor nor the temporary president of the senate shall act as a member of the court. The court for the trial of impeachments may order all or any part of the

testimony to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court if he so desire. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

Section 16. The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms except that the county courts in the counties of Kings, Queens, Richmond and Bronx shall be abolished and the county judges transferred as provided in this article. The number of county judges in any county may be increased, from time to time, by the legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand, or major fraction thereof, of the population of such county. The additional county judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office. All county judges, including successors to existing judges, shall be chosen by the electors of the counties for the term of six years from and including the first day of January following their election. Except as in this article otherwise provided county courts shall have the powers and jurisdiction now prescribed by the legislature, and also original jurisdiction in actions for the recovery of money only, where all the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding three thousand dollars. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which (1) the sum demanded exceeds three thousand dollars, or (2) in which any person not a resident of the county is a defendant, unless such defendant have an office



for the transaction of business within the county and the cause of action arose therein. Every county judge and special county judge in counties having the same shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

Section 17. The existing surrogates' courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and surrogates' courts shall have the jurisdiction and powers now prescribed by the legislature until otherwise provided by law. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. Vacancies occurring in the office of judge of the court of general sessions of the city of New York, judge of the city court of New York, county judge, special county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court. For the relief of surrogates' courts the legislature may confer upon the supreme court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates. A surrogate of any county may hold a surrogate's court in any other county when requested by the surrogate of such other county. The legislature may at any time consolidate the offices of county judge and surrogate in any county.

Section 18. The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Section 19. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the remainder of the unexpired term. Their number, classification and duties shall be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace, city magistrates and all other judicial officers whose election or appointment is not otherwise provided for in this article may be elected in the several cities of this state, or in any boroughs contained within a city, or within districts created for that purpose or may be appointed by some local authorities of the several cities, in such manner and with such powers and for such terms, respectively, as are or may be prescribed by law. The boards of supervisors or other officials exercising power now vested in such boards may fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters.

Section 20. The court of general sessions in and for the city and county of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and powers throughout the city of New York, under the name of the court of general sessions of the city of New York, as it now possesses within the county of New York. It shall consist of the judges then in office and the judges transferred thereto by this section, all of whom shall continue to be judges of the court of general sessions of the city of New York for the remainder of the terms for which they respectively were elected or appointed. The county courts of Kings, Queens, Richmond and Bronx are abolished from and after the first day of January, one thousand nine hundred and seventeen. The judges of such courts then in office shall for the remainder of the terms for which they were elected or appointed, be judges of the court of general sessions of the city of New York. The successors to the judges who were elected or appointed as judges of the court of general sessions in and for the city and county of New York shall be elected by the electors within the county of New York, and the successors to the judges who were elected or appointed

as judges of the county courts of Kings, Queens, Richmond and Bronx, respectively, shall be elected by the electors within each of such respective counties, so that the court of general sessions of the city of New York shall consist of seven judges resident in and elected by the electors within the county of New York, five judges resident in and elected by the electors in the county of Kings, and one judge resident in and elected by the electors in each of the counties of Queens, Richmond and Bronx. The legislature may in its discretion authorize the election of one additional judge to reside in and be chosen by the electors in the county of Bronx. The judges who were elected or appointed as judges of the court of general sessions in and for the city and county of New York, and the judges elected or appointed as judges of the county court of the counties of Kings, Queens, Richmond and Bronx, shall until the expiration of the term for which they were appointed or elected, be respectively paid by the city, the compensation now fixed by law. The successors of all of the judges of the court of general sessions of the city of New York shall be elected as hereinafter provided for a term of fourteen years, and their compensation shall be fixed by the legislature. The judges of the court of general sessions of the city of New York shall choose one of their own number to be the presiding judge thereof, who shall act as such for a period of five years or until the earlier expiration of his term of office, and who shall be charged with the general administration of the court, and assign the judges to hold the terms thereof, subject to such regulations as the presiding justices of the appellate divisions of the supreme court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All criminal prosecutions and proceedings on the first day of January, one thousand nine hundred and seventeen, pending in such county courts shall thereupon be transferred to the court of general sessions of the city of New York for hearing and determination at terms held within the counties in which the same are pending. Until the legislature shall otherwise provide the clerk of the court of general sessions in and for the city and county of New York and the chief clerk of the county court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the court of general sessions of the city of New York, and the presiding judge of such court shall make such rules

and regulations respecting such clerks' offices and the distribution of the business of the court in the said several counties as from time to time may be expedient.

Section 21. The city court of the city of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and power throughout the city of New York, under the name of the city court of New York, as it now possesses within the county of New York and the county of Bronx and original jurisdiction in actions for the recovery of money only in which the complaint demands judgment for a sum not exceeding three thousand dollars. Such court shall have likewise the equity jurisdiction now possessed by county courts but such jurisdiction shall be exercised only within the respective counties of such city by the judges elected within such counties. It shall consist of the judges then in office who shall continue to be judges of the court for the remainder of the terms for which they respectively were elected or appointed, and the additional judges to be elected as provided in this section. The judges who were elected or appointed as judges of the city court of the city of New York, until the expiration of the terms for which they were respectively elected or appointed, shall be paid the salaries now fixed by law for such judges. Their successors shall be elected by the electors of the county of New York and shall hold office for ten years. There shall also be five additional judges, two of whom shall reside in and be chosen by the electors of the county of Kings, and one of whom shall reside in and be chosen by the electors in each of the counties of Bronx, Richmond and Queens, all of whom shall be elected at the general election in November, one thousand nine hundred and sixteen, and they and their successors, who shall be chosen in like manner, shall hold office for ten years. Until the legislature shall otherwise provide the judge of the city court chosen in the county of Richmond shall be surrogate of that county. The legislature may provide for a surrogate for the county of Richmond. The legislature may in its discretion authorize the election of two additional judges, one to reside in and be chosen by the electors of the respective counties of Bronx and Kings. The judges elected as in this section provided shall receive from the city a compensation to be fixed by the legislature. The judges of the city court of New York shall choose one of their own number to be the presiding judge thereof who shall be charged with the general administration

of the court and assign the judges to hold the terms thereof, subject to such regulations as the presiding justices of the appellate divisions of the supreme court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All civil actions or proceedings on the first day of January, one thousand nine hundred and seventeen, pending in the county courts of the counties of Kings, Queens, Richmond and Bronx, respectively, shall thereupon be transferred to the city court of New York for hearing and determination, which court for the purpose only of such hearing and determination and the enforcement of the judgments rendered thereon shall have and exercise the jurisdiction previously vested in the respective county courts from which such cases are so transferred, at terms held within the counties in which the same are pending. Until the legislature shall otherwise provide, the clerk of the city court of the city of New York and the chief clerk of the county court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the city court of New York, and the presiding judge of the court shall make such rules and regulations respecting the clerks' offices and the distribution of the business of the court in the said several counties as from time to time may be expedient, subject to regulations of the presiding justices of the first and second departments as aforesaid.

Section 22. Inferior local courts of civil and criminal jurisdiction may be established by the legislature, but no inferior local court created after the first day of January, one thousand eight hundred and ninety-five, shall be a court of record. Except as herein provided the legislature shall not hereafter confer upon any inferior local court of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon county courts by or under this article.

The legislature may, however, provide that the territorial jurisdiction of any inferior local court now existing or hereafter established in any city or village or of justices of the peace in cities shall extend throughout the county in which such court or justice is located, and also throughout such city or village irrespective of town or county lines. The legislature may also create civil divisions consisting of not to exceed three contiguous towns or parts thereof for the purpose of establishing therein inferior local courts

having territorial jurisdiction throughout the county or counties in which such towns are situated. The legislature may confer upon any inferior local court power to try without a jury offenses of the grade of misdemeanor. The legislature may establish children's courts, and courts of domestic relations, as separate courts, or parts of existing courts or courts hereafter to be created, and may confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment and correction of adults responsible for or contributing to such delinquency, neglect or dependency, and of all persons legally chargeable with the support of a wife or children who abandon or neglect to support either. In the exercise of such jurisdiction such courts may hear and determine such causes, with or without a jury, except those involving a felony. Except as in this article otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the legislature may direct.

Section 23. Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The justices of the appellate division in each department shall have power to appoint and to remove a clerk who shall keep his office at a place to be designated by such justices. The clerk of the court of appeals shall keep his office at the seat of government. The clerk of the court of appeals and the clerks of the appellate divisions shall receive compensation to be established by law and paid out of the public treasury.

Section 24. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record in this state, or act as referee. The legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of judge of the court of appeals, justice of the supreme court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this state.

Section 25. The legislature shall provide for the speedy publication of all statutes, civil practice rules and rules of court, and

the collection, compilation and publication annually of the civil and criminal judicial statistics of the state, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

Section 26. Justices of the peace and other local judicial officers provided for in sections nineteen and twenty-two, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

Section 27. Courts of special sessions and inferior local courts of similar character shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

Section 28. Commissioners of jurors now in office shall hold their offices until the expiration of their respective terms. The legislature may provide for the appointment of a commissioner of jurors in any county; in a county in the first and second judicial districts, by the respective appellate divisions of the supreme court embracing those districts, and in a county in the other judicial districts, by the justices of the supreme court resident in the judicial district embracing such county. The legislature shall define the duties of commissioners of jurors, fix their terms of office and their compensation which shall be a county charge.

Section 29. Laws may be passed to provide for a system of judicial authentication, registration and guaranty by the state, or by any county thereof, of titles to real property, the determination of adverse claims to and interests therein, and the establishment by means of fees or otherwise of assurance funds to make such system operative. Such administrative powers as are necessary may be conferred on existing courts of record.

## ARTICLE IX.

Section 1. The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

Section 2. The state may contract debts in anticipation of the receipt of taxes and revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made; bonds or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from such taxes and revenues within one year from the date of issue.

Section 3. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Section 4. Except the debts specified in sections two and three of this article, no debt shall be hereafter contracted by or in behalf of this state, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein. On the final passage of such bill in either house of the legislature, the question shall be taken by yeas and nays, to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time by law forbid the contracting of any further debt or liability under such law.

Except the debts specified in sections two and three of this article, all debts contracted by the state after the second day of November, one thousand nine hundred and fifteen, pursuant to an authorization therefor, heretofore or hereafter made and each portion of any such debt from time to time so contracted irrespective of the terms of such authorization, shall be paid in equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by general laws, which determination shall be conclusive.

The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of this section or upon any part of such debt, provided, however, that the rate of interest shall not



be altered upon any part of such debt or upon any bond or other evidence thereof which has been or shall be created or issued before such alteration.

The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability and for no other purpose whatever.

Section 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state heretofore contracted shall be continued; they shall be separately kept and safely invested and neither of them shall be appropriated or used in any manner other than for such payment and extinguishment as hereinafter provided. The comptroller shall each year appraise the securities held for investment in each of such funds at their fair market value not exceeding par. He shall then determine and certify to the legislature the amount of each of such funds and the amounts which, if thereafter annually contributed to each such fund, would, with the fund and with the accumulations thereon and upon the contributions thereto, computed at the rate of three per centum per annum, produce at the date of maturity the amount of the debt to retire which such fund was created, and the legislature shall thereupon appropriate as the contribution to each such fund for such year at least the amount thus certified.

If the income of any such fund in any year is more than a sum which, if annually added to such fund would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created.

After any sinking fund shall equal in amount the debt for which it was created no further contribution shall be made thereto except to make good any losses ascertained at the annual appraisals above mentioned, and the income thereof shall be applied to the payment of the interest on such debt. Any excess in such income not required for the payment of interest may be applied to the general fund of the state.

The legislature may also by general laws provide means and authority whereby outstanding bonds of the state, for which sinking funds are provided, may be exchanged at par for cancellation, for serial bonds of the form authorized under section four of this article, upon such terms and conditions as to interest and other-

wise as it may in its discretion authorize or determine, except that the debt as thus refunded shall finally mature no later and at no greater comparative cost to the state than the original debt; the determination of the legislature as to such comparative cost shall be conclusive. No further contributions to the respective sinking funds shall be made on account of bonds so exchanged and the proportion of any such sinking fund which the amount of the bonds so exchanged shall bear to the amount of bonds outstanding of the same issue may be appropriated, as required, for the payment of the substituted serial bonds.

Section 6. The legislature shall annually provide by appropriation for the payment of the interest upon and instalments of principal of all debts created on behalf of the state except those contracted under section two of this article, as the same shall fall due, and for the contribution to all of the sinking funds heretofore created by law, of the amounts annually to be contributed under the provisions of section five of this article. If at any time the legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest, instalments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of such bonds.

Section 7. Debts hereafter authorized for the improvement of highways shall be created only in the manner provided in section four of this article. No provision of this article shall be deemed to impair or affect the validity of any debt of the state heretofore contracted or any right or obligation heretofore created between the state and any of its civil divisions.

Section 8. The moneys authorized to be raised by the sale of highway bonds pursuant to the law approved by vote of the people at the general election held in the year one thousand nine hundred and twelve, which have been apportioned to certain counties in excess of the sums, to be determined by the comptroller, which are or will be required to construct and improve the highways theretofore determined by general laws to be constructed and improved in such counties, shall be applied by the superintendent of public

works after appropriation by the legislature to the construction and improvement of such state routes and portions thereof, as were defined by law when such bonds were authorized, and located outside of such counties, as he may deem expedient.

Section 9. Neither the legislature, canal board, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

Section 10. The legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, the Black River canal, or canal terminals heretofore or hereafter constructed, nor shall any easement in or incumbrance on such canals or terminals be created; but they shall remain the property of the state and under its management forever. When necessary in the opinion of the superintendent of public works, easements in canal lands may be granted for purposes of bridge construction, provided that such easements shall not interfere with or impair the use of the canals. The canals to which such prohibition applies shall be those now known as the Erie, the Oswego, the Champlain, the Cayuga and Seneca, and the Black River canals until the barge canal improvement under chapter one hundred and forty-seven of the laws of one thousand nine hundred and three, as heretofore amended, and chapter three hundred and ninety-one of the laws of one thousand nine hundred and nine, as heretofore amended, shall have been completed, when such prohibition shall apply only to the said terminals, the Black River canal, the said improved canals, the portions of existing canals heretofore reserved for barge canal or canal terminal purposes by statute, the existing inland Erie canal from Tonawanda creek to connection with the Black Rock harbor, those portions of the Erie and Champlain canals heretofore reserved by chapter two hundred and forty-three of the laws of one thousand nine hundred and thirteen and canal slips numbers one and two in the city of Buffalo; provided, however, that in the city of Utica that portion of the existing Erie canal between Schuyler

and Third streets may be sold or otherwise disposed of on condition that a flow of sufficient water from Schuyler to Third street to feed that portion of the canal east of Third street be maintained. The abandonment, sale or other disposition of canals or canal property shall be under and pursuant to general laws only and such laws shall secure to the state the fair appraised value of the property which may be abandoned and sold. Such general laws may provide for the abandonment of portions of the existing canals which by reason of the completion of parts of the barge canals shall have become unnecessary for purposes of navigation and shall be certified by the superintendent of public works to have become so.

Real property which has been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the state in fee unless expressly taken for temporary purposes.

The leasing of surplus waters of any of the state canals or canal feeders or of any waters impounded by the construction of dams, reservoirs or other structures shall hereafter be pursuant to general laws only, but this provision shall not authorize the use for other than navigation purposes of water diverted from the Black river watershed to feed the Erie canal. No such lease nor the use of waters thereunder shall in any way injure, impair, interfere with, or endanger navigation or the construction, use, maintenance, operation or safety of the canals or of other property of the state. Each lease shall be for a stated period not exceeding thirty years and shall reserve to the state the right, whenever in the opinion of those having charge of the management and operation of the canals the needs of navigation require it, to terminate or suspend the same and to regulate or alter the amount of water to be used thereunder, together with the corresponding compensation therefor, without incurring liability upon the part of the state.

Section 11. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest

price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

Section 12. The canals may be improved in such manner as the legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax.

## ARTICLE X.

Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the state or a civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each house.

Section 2. Taxes shall be imposed by general laws and for public purposes only. The legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relating to the assessment and collection of taxes, any provision of section two of article thirteen of this constitution to the contrary notwithstanding. The legislature shall provide for the supervision, review and equalization of assessments.

Section 3. For the assessment of real property, heretofore locally assessed, the legislature shall establish tax districts, none of which, unless it be a city, shall embrace more than one county. The assessors therein shall be elected by the electors of such districts or appointed by such authorities thereof as shall be designated by law. The legislature may provide that the assessment roll of each larger district shall serve for all the lesser tax districts within its boundaries. No such tax district larger than a town, except a city, shall be established until the law providing therefor shall have been adopted by a vote of a majority of the electors voting thereon in such proposed district at an election for which provision shall be made by law. The legislature may, however, provide for the assessment by state authorities of all the property of designated classes of public service corporations.

## ARTICLE XI.

Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

Section 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Section 3. The term corporations as used in this article shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Section 4. The legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Section 5. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

Section 6. The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Section 7. The stockholders of every corporation and joint stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

Section 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Section 9. Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the state for educational purposes.

Section 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law.

Section 11. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of such county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in

anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of such city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by cities of the first class after the first day of January, one thousand nine hundred and four, and debts incurred by any city of the second class after the first day of January, one thousand nine hundred and eight, and debts incurred by any city of the third class after the first day of January, one thousand nine hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on such debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of such city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal such interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by such city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city



of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Section 12. The legislature shall provide for the method and limitations under which debts may be contracted by the cities, counties, towns, villages and other civil divisions of the state to the end that such debts shall be payable in annual instalments the last of which shall fall due and be paid within fifty years after such debt shall have been contracted and that no such debt shall be contracted for a period longer than the probable life of the work or object for which the debt is to be contracted.

Section 13. The legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions, hereinafter mentioned, but including all reformatories except

those in which adult males convicted of felony shall be confined; a state commission in lunacy in which shall remain the management and fiscal control of the state hospitals for the insane (not including institutions for criminals or convicts) except in so far as such management may now or hereafter be delegated by the legislature to local boards of managers, and which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Section 14. The members of such board and of such commissions shall be appointed by the governor, by and with the advice and consent of the senate; and any member may be removed from office by the governor for cause, an opportunity having been given him to be heard in his defense.

Section 15. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of this constitution, shall remain in force until amended or repealed by the legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

Section 16. Nothing in this constitution contained shall prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the legislature by general laws.

Section 17. Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the legislature shall otherwise provide. The legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of this constitution.

## ARTICLE XII.

Section 1. The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Section 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised, by not less than nine regents.

Section 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of such common school fund shall be applied to the support of common schools; the revenue of such literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of such common school fund.

Section 4. Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

## ARTICLE XIII.

Section 1. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and

as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the legislature shall direct. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Section 2. All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as shall be provided by law. All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as may be provided by law.

Section 3. When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Section 4. The time of electing all officers named in this article shall be prescribed by law.

Section 5. The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Section 6. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial,

whose powers and duties are not local or legislative and who shall be elected at general elections, and also for filling vacancies created by such removal.

Section 7. The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.

Section 8. No officer whose salary is fixed by this constitution shall receive any additional compensation. Each of the other state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

Section 9. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law: but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Section 10. Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive: provided however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

#### ARTICLE XIV.

Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the state, shall constitute the militia, subject however to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the legislature of this state.

Section 2. The legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Section 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the legislature may deem proper, provided however that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the legislature at each session to make sufficient appropriations for the maintenance thereof.

Section 4. The governor shall appoint his aides-de-camp and military secretary and the adjutant-general of the state, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the governor shall have been elected; he shall also nominate, and with the consent of the senate appoint, all major generals. The legislature may prescribe the number and qualifications of major generals and aides-de-camp.

Section 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner and shall have such qualifications as the legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

Section 6. The commissioned officers shall be commissioned by the governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the sentence of a court martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of three months or more.

## ARTICLE XV.

Section 1. It shall be the duty of the legislature by general laws to provide for the organization of new cities in such manner as shall secure to them the exercise of the powers granted to cities in this article. Except as to cities having more than one hun-

dred thousand population, it shall be the duty of the legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village.

Section 2. The legislature may regulate and fix the wages and, except as otherwise provided in this article, the salaries and may also regulate and fix the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof.

Section 3. Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government subject to the provisions of this constitution and subject further to the provisions of the general laws of the state, of laws applying to all the cities of the state without classification or distinction, and of laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein.

Such power shall be deemed to include among others:

(a) The power to organize and manage all departments, bureaus, or other divisions of its municipal government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, including all police and health officers and employees paid by the city, and of all non-judicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city except assistants and employees of district attorneys and except officers and employees of courts of record.

(b) The power, as hereinafter provided, to revise or enact amendments to its charter in relation to its property, affairs or municipal government and to enact amendments to any local or special law in relation thereto. A city may adopt a revised charter or enact amendments to its charter or any existing special or local law in relation to any matter of state concern the management, regulation and control of which shall have been delegated to the city by law, until and unless the legislature, pursuant to the pro-

visions of section four of this article shall enact a law inconsistent therewith. The term "charter" is declared for the purposes of this article to include any general city law enacted for the cities of one class in so far as it applies to such city.

The legislative body of the city may enact such amendments, subject to the approval of the mayor and of the board of estimate and apportionment of the city if any there be; provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body. Every such enactment shall embrace only one subject and shall expressly declare that it is such an amendment. Every amendment which changes the framework of the government of the city or modifies restrictions as to issuing bonds or contracting debts shall be submitted to the legislature in the year one thousand nine hundred and sixteen on or before the fifteenth day of March and in any year thereafter during the first week of its next regular session, and shall take effect as law sixty days after such submission unless in the meantime the legislature shall disapprove the same by joint resolution. Every other such amendment shall take effect upon its enactment as above provided without such submission to the legislature.

The legislature by general law shall provide for a public notice and opportunity for a public hearing by the legislative body of the city concerning any such amendment before final action thereon by it.

At the general election in the year one thousand nine hundred and seventeen, and unless its charter after one revision thereof shall otherwise provide, in every eighth year thereafter either at the general or at a special election, every city shall submit to the electors thereof, the question "Shall there be a commission to revise the charter of the city?" and may at the same time choose seven commissioners to revise the city charter in case the question be answered in the affirmative, provided, however, that in the city of New York the number of such commissioners shall be sixteen, nine of whom shall be chosen by the electors of the entire city, two by the electors of the borough of Manhattan, two by the electors of the borough of Brooklyn, and one each by the electors of the boroughs of The Bronx, Queens and Richmond respectively. Such revision when completed shall be filed in the office of the city



clerk, and not less than six weeks after such filing shall be submitted to the electors of the city at the next ensuing general election or at a special election to be called for that purpose. If such revision be approved by the affirmative vote of the majority of the electors voting thereon such revision shall be submitted to the legislature during the first week of its session in January of the year following the approval thereof, and if not disapproved by the legislature by joint resolution prior to the first day of July thereafter shall thereupon take effect as law except as therein otherwise specified. The legislature shall by general law provide for carrying into effect the provisions of this paragraph.

Every charter revision and every amendment of any provision of law, enacted pursuant to this section, shall be deposited with the secretary of state and published as the legislature may direct.

Section 4. All cities are classified according to the latest federal or state census or enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities.

The legislature may delegate to cities for exercise within their respective local jurisdictions such of its powers of legislation as to matters of state concern as it may from time to time deem expedient.

The legislature shall pass no law relating to the property, affairs or municipal government of any city excepting such as is applicable to all the cities of the state without classification or distinction.

The provisions of this article shall not be deemed to restrict the powers of the legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs or municipal government of cities.

Laws affecting cities in relation to boundaries, water supply, sewerage and public improvements, involving the use of territory outside the boundaries of cities, and in relation to the government of cities in matters of state concern and applying to less than all the cities of the state without classification or distinction are defined for the purposes of this article as special city laws. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law has been passed by both branches of the legislature, the house in

which it originated shall immediately transmit a certified copy thereof to the mayor of each city to which it relates, and within fifteen days thereafter the mayor shall return such bill to the clerk of the house from which it was sent, who, if the session of the legislature at which such bill was passed has terminated, shall immediately transmit the same to the governor with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city" or "cities" as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city" or "cities" as the case may be.

Section 5. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York, Kings, Queens, Richmond and Bronx, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand nine hundred and seventeen, whose successors have not then been elected, which under existing

laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to elections of any judicial officers, except judges and justices of inferior local courts.

## ARTICLE XVI.

Section 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote" and no other oath, declaration or test shall be required as a qualification for any office or public trust.

Section 2. Any person holding office under the laws of this state, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Section 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be guilty of an attempt to bribe, which is hereby declared to be a felony.

Section 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Section 5. No public officer, or person elected or appointed to a public office, under the laws of this state, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the attorney-general. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Section 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person

holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

## ARTICLE XVII.

Section 1. Any amendment or amendments to this constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, after consideration in joint session as hereinafter provided and after the same shall have been printed and upon the desks of the members in its final form for at least five calendar legislative days prior to agreement thereon, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice. On the first Tuesday following the adoption by either house of the legislature of any proposed amendment to this constitution, the two houses shall convene in joint session for the consideration thereof and thereafter the proposal shall be considered and acted upon by the houses separately. If in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, and all the requirements for the original passage thereof shall be observed, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people for approval at the general election in such manner as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this constitution from and after the first day of January next after such approval.

Section 2. The question "Shall there be a convention to revise and amend the constitution?" shall be submitted to the electors of the state at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof, and shall be submitted at such other general elections as the legislature may by law provide. In case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then

organized, shall elect three delegates at the next ensuing general election at which members of the assembly shall be chosen, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday following the completion of the canvass of the votes cast for delegates-at-large at such election and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same reimbursement for railroad fare as shall then be annually payable to the members of the assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to this constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualification of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state in the manner provided by such convention, at a general election which shall be held not less than ninety days after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendments, shall go into effect on the first day of January next after such approval.

Section 3. The validity of an election upon any amendment or proposed constitution or the question "Shall there be a convention to revise and amend the constitution?" or upon any other question submitted to the electors of the state under this constitution, and the determination whether the proposed amendment,

constitution or question has received the number of votes requisite for the adoption of such amendment or constitution or the decision of such question, may be contested in the supreme court by any elector in an action in equity brought within three months after such election against the secretary of state, and the judgment rendered shall be reviewable by the court of appeals.

Section 4. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the legislature, coincidently submitted to the people for approval, shall, if approved, be deemed to supersede the amendment so proposed by the legislature; provided, however, that, if at the general election held in the year one thousand nine hundred and fifteen, a majority of the electors voting thereon shall have approved and ratified the amendment to section one of article two of the constitution then in force, heretofore proposed by the legislature, section one of article two of this constitution shall be deemed thereby amended so as to embody therein the new matter contained in such proposed amendment so approved. If, at such general election, a majority of the electors voting thereon shall have approved and ratified chapter five hundred and seventy of the laws of one thousand nine hundred and fifteen heretofore submitted to the people pursuant to section four of article seven of the constitution then in force, the same shall take effect notwithstanding any amendment of such constitution, except that, irrespective of the terms of such chapter, the debt so authorized shall be paid in equal annual instalments in conformity with section four of article nine of this constitution.

## ARTICLE XVIII.

Section 1. This constitution shall be in force from and including the first day of January, one thousand nine hundred and sixteen, except as herein otherwise provided.

Done in Convention at the Capitol in the city of Albany, the  
day of September, in the year one thousand  
nine hundred and fifteen, and of the Independence  
of the United States of America the one hundred and  
fortieth.

In witness whereof, we have hereunto subscribed our  
names.

President and Delegate at Large.

Secretary.





# SCHEDULE A

## SOURCE OF ARTICLES OF CONSTITUTION OF 1915

CONSTITUTION OF 1915		CONSTITUTION OF 1894
Article	Subject	Article
1	Civil rights . . . . .	1
2	Elective franchise . . . . .	2
3	Legislature . . . . .	3; 10 pt.; new pt.
4	Executive . . . . .	4
5	Appropriations and the budget . . . . .	new
6	State departments . . . . .	5 pt.; new pt.
7	Conservation . . . . .	7 pt.; new pt.
8	Judiciary . . . . .	6 pt.; new pt.
9	State debts . . . . .	7
10	Taxation . . . . .	new
11	Corporations; municipal debts; state boards and commissions . . . . .	8; new pt.
12	Education . . . . .	9
13	Officers generally . . . . .	10; 5 pt.
14	Military . . . . .	11
15	Cities and Villages . . . . .	12; new pt.
16	Official corruption . . . . .	13
17	Constitutional amendments . . . . .	14; new pt.
18	Time of taking effect . . . . .	15

# SCHEDULE B

## DISPOSITION OF SECTIONS OF CONSTITUTION OF 1894

CONSTITUTION OF 1894		CONSTITUTION OF 1915		
Article	Section	Article	Section	Proposal
1	1. . . . .	1	1. . . . .	
	2. . . . .	1	2. . . . .	
	3. . . . .	1	3. . . . .	
	4. . . . .	1	4. . . . .	
	5. . . . .	1	5. . . . .	
	6. . . . .	1	6. . . . .	Amended. Proposal 870
	7 (as am'd 1913) . . . . .	1	7. . . . .	Amended. Proposal 870
	8. . . . .	1	8. . . . .	
	9. . . . .	1	9. . . . .	
	10. . . . .	1	10. . . . .	
	11. . . . .	1	11. . . . .	
	12. . . . .	1	12. . . . .	
	13. . . . .	1	13. . . . .	
	14. . . . .	1	14. . . . .	

## SCHEDULE B (Continued)

## DISPOSITION OF SECTIONS OF CONSTITUTION OF 1894

CONSTITUTION OF 1894		CONSTITUTION OF 1915		
Article	Section	Article	Section	Proposal
1	15.....	1	15.....	Amended. Proposal 799
	16.....	1	16.....	
	17.....	1	17.....	
	18.....	1	18.....	Amended. Proposal 865
	19 (added 1913)....	1	19.....	Amended. Proposal 865
2	1.....	2	1.....	Amended. Proposal 844
	2.....	2	2.....	
	3.....	2	3.....	
	4.....	2	4.....	
	5.....	2	5.....	
	6.....	2	6.....	
3	1.....	3	1.....	Amended. Proposal 869 Amended. Proposal 869 Amended. Proposal 869 Amended. Proposal 869 Amended. Proposal 835 Repealed. Proposal 869 Amended. Proposal 869 Amended. Proposal 841 Amended. Proposal 861  Am'd. Pro'ls 746 and 861  Amended. Proposal 861 Amended. Proposal 861 Amended. Proposal 854 Amended. Proposal 809  Repealed. Proposal 861  Repealed. Proposal 861 Amended. Proposal 853 Amended. Proposal 853 Amended. Proposal 800 Amended. Proposal 861
	2.....	3	2.....	
	3.....	3	3.....	
	4.....	3	4.....	
	5.....	3	5.....	
	6.....	3	8.....	
	7.....	.....	.....	
	8.....	3	11.....	
	9.....	3	6.....	
	10.....	3	9.....	
	11.....	3	12.....	
	12.....	3	13.....	
	13.....	3	14.....	
	14.....	3	15.....	
	15.....	3	16.....	
	16.....	3	17.....	
	17.....	3	18.....	
	18 (as am'd 1901)...	3	19.....	
	19.....	3	20.....	
	20.....	3	21.....	
	21.....	3	22.....	
	22.....	3	23.....	
	23.....	.....	.....	
	24.....	3	24.....	
	25.....	.....	.....	
	26 (as am'd 1899)...	3	25.....	
	27 (as am'd 1909)...	3	26.....	
	28.....	3	27.....	
	29.....	3	28.....	
4	1.....	4	1.....	Amended. Proposal 868
	2.....	4	2.....	
	3.....	4	3.....	
	4.....	4	4.....	Amended. Proposal 868
	5.....	4	5.....	
	6.....	4	6.....	Amended. Proposal 846
	7.....	4	7.....	
	8.....	4	8.....	Amended. Proposal 846
	9.....	4	9.....	

**SCHEDULE B (Continued)**  
**DISPOSITION OF SECTIONS OF CONSTITUTION OF 1894**

CONSTITUTION OF 1894		CONSTITUTION OF 1915		
Article	Section	Article	Section	Proposal
5	1.....	.....	.....	Repealed. Proposal 863
	2.....	.....	.....	Repealed. Proposal 863
	3.....	.....	.....	Repealed. Proposal 863
	4.....	.....	.....	Repealed. Proposal 863
	5.....	5	7 (new).....	Old. Rep. Prop. 857
	6.....	.....	.....	Repealed. Proposal 863
	7.....	.....	.....	Repealed. Proposal 863
	8.....	13	9.....	
	9.....	13	10.....	
6	1 (as am'd 1905)...	8	1.....	Amended. Proposal 850
	2 (as am'd 1905)...	8	2.....	Amended. Proposal 850
	3.....	8	4.....	Amended. Proposal 850
	4.....	8	5.....	Amended. Proposal 850
	5.....	.....	.....	Out. Proposal 850
	6.....	.....	.....	Out. Proposal 850
	7 (as am'd 1899)...	8	9.....	Amended. Proposal 850
	8.....	8	10.....	Amended. Proposal 850
	9.....	8	11.....	Amended. Proposal 850
	10.....	8	12.....	Amended. Proposal 850
	11.....	8	13.....	Amended. Proposal 850
	12 (as am'd 1909)...	8	14.....	Amended. Proposal 850
	13.....	8	15.....	Amended. Proposal 850
	14 (as am'd 1913)...	8	16.....	Amended. Proposal 850
	15.....	8	17.....	Amended. Proposal 850
	16.....	8	18.....	Amended. Proposal 850
	17.....	8	19.....	Amended. Proposal 850
	18.....	8	22.....	Amended. Proposal 850
	19.....	8	23.....	Amended. Proposal 850
	20.....	8	24.....	Amended. Proposal 850
	21.....	8	25.....	Amended. Proposal 850
	22.....	8	26.....	Amended. Proposal 850
	23.....	8	27.....	Amended. Proposal 850
7	1.....	9	1.....	
	2.....	9	2.....	Amended. Proposal 784
	3.....	9	3.....	
	4 (as am'd 1909)...	9	4.....	Amended. Proposal 784
	5.....	9	5.....	Amended. Proposal 784
	6.....	9	9.....	
	7 (as am'd 1913)...	7	2 pt.; 3; 6.....	Repealed. Proposal 852
	8.....	9	10.....	Amended. Proposal 845
	9.....	9	11.....	
	10.....	9	12.....	
	11 (added 1905)....	9	6.....	Amended. Proposal 784
	12 (added 1905)....	9	7.....	Amended. Proposal 784
8	1.....	11	1.....	
	2.....	11	2.....	
	3.....	11	3.....	
	4.....	11	4.....	

**SCHEDULE B** (*Concluded*)

## DISPOSITION OF SECTIONS OF CONSTITUTION OF 1894

CONSTITUTION OF 1894		CONSTITUTION OF 1915		
Article	Section	Article	Section	Proposal
8	5.....	11	5.....	
	6.....	11	6.....	
	7.....	11	7.....	
	8.....	11	8.....	
	9.....	11	9.....	
	10 (as am'd 1909)...	11	10; 11.....	Amended. Proposal 862
	11.....	11	13.....	Amended. Proposal 827
	12.....	11	14.....	
	13.....	11	15.....	
	14.....	11	16.....	
	15.....	11	17.....	
9	1.....	12	1.....	
	2.....	12	2.....	
	3.....	12	3.....	
	4.....	12	4.....	
10	1.....	13	1.....	
	2.....	13	2.....	Amended. Proposal 853
	3.....	13	3.....	
	4.....	13	4.....	
	5.....	13	5.....	
	6.....	3	7.....	Tr. by Proposal 869
	7.....	13	6.....	
	8.....	13	7.....	
	9.....	13	8.....	
11	1.....	14	1.....	
	2.....	14	2.....	
	3.....	14	3.....	
	4.....	14	4.....	Amended. Proposal 761
	5.....	14	5.....	Amended. Proposal 794
	6.....	14	6.....	Amended. Proposal 764
12	1 (as am'd 1905)...	15	1 pt.; 2.....	Amended. Proposal 851
	2 (as am'd 1907)...	15	4.....	Amended. Proposal 851
	3.....	15	5.....	Amended. Proposal 851
13	1.....	16	1.....	
	2.....	16	2.....	
	3.....	16	3.....	
	4.....	16	4.....	
	5.....	16	5.....	
	6.....	16	6.....	
14	1.....	17	1.....	Amended. Proposal 855
	2.....	17	2.....	Amended. Proposal 855
	3.....	17	4.....	Amended. Proposal 855
15	1.....	18	1.....	Amended. Proposal 145

NOTE.— The amendments submitted to and adopted by the people in 1905, to Art. 6, § 1; Art. 7, § 11; and Art. 12, § 1, were adopted by the Legislature in 1903. All other amendments by the people were adopted by the Legislature of the same year in which they were submitted.

# SCHEDULE C

## SOURCES OF SECTIONS OF CONSTITUTION OF 1915

CONSTITUTION OF 1915		CONSTITUTION OF 1894		
Article	Section	Article	Section	Proposal
1	1	1	1.....	
	2	1	2.....	
	3	1	3.....	
	4	1	4.....	
	5	1	5.....	
	6	1	6.....	Amended. Proposal 870
	7	1	7 (as am'd 1913)...	Amended. Proposal 870
	8	1	8.....	
	9	1	9.....	
	10	1	10.....	
	11	1	11.....	
	12	1	12.....	
	13	1	13.....	
	14	1	14.....	
	15	1	15.....	Amended. Proposal 799
	16	1	16.....	
	17	1	17.....	
	18	1	18.....	Amended. Proposal 865
	19	1	19 (as am'd 1913)...	Amended. Proposal 865
2	1	2	1.....	
	2	2	2.....	
	3	2	3.....	
	4	2	4.....	Amended. Proposal 844
	5	2	5.....	
	6	2	6.....	
3	1	3	1.....	Amended. Proposal 869
	2	3	2.....	Amended. Proposal 869
	3	3	3.....	Amended. Proposal 869
	4	3	4.....	Amended. Proposal 869
	5	3	5.....	Amended. Proposal 869
	6	3	9.....	
	7	10	6.....	Transferred by proposal 869
	8	3	6.....	Amended. Proposal 835
	9	3	10.....	Amended. Proposal 841
	10	....	.....	New. Proposal 819
	11	3	8.....	Amended. Proposal 869
	12	3	11.....	Amended. Proposal 861
	13	3	12.....	
	14	3	13.....	
	15	3	14.....	
	16	3	15.....	Amended. Prop. 746; prop. 861
	17	3	16.....	
	18	3	17.....	
	19	3	18 (as am'd 1901)...	Amended. Proposal 861
	20	3	19.....	Amended. Proposal 861
	21	3	20.....	Amended. Proposal 854
	22	3	21.....	Amended. Proposal 809
	23	3	22.....	
	24	3	24.....	
	25	3	26 (as am'd 1899)...	Amended. Proposal 853

## SCHEDULE C (Continued)

## SOURCES OF SECTIONS OF CONSTITUTION OF 1915

CONSTITUTION OF 1915		CONSTITUTION OF 1894		
Article	Section	Article	Section	Proposal
3	26	3	27 (as am'd 1909) . . .	Amended. Proposal 853
	27	3	28 . . . . .	Amended. Proposal 800
	28	3	29 . . . . .	Amended. Proposal 861
	29	....	.....	New. Proposal 864
4	1	4	1 . . . . .	Amended. Proposal 868
	2	4	2 . . . . .	
	3	4	3 . . . . .	
	4	4	4 . . . . .	Amended. Proposal 868
	5	4	5 . . . . .	
	6	4	6 . . . . .	Amended. Proposal 846
	7	4	7 . . . . .	Amended. Proposal 846
	8	4	8 . . . . .	
	9	4	9 . . . . .	
5	1	....	.....	New. Proposal 809
6	1	....	.....	New. Proposal 863
	2	....	.....	New. Proposal 863
	3	....	.....	New. Proposal 863
	4	....	.....	New. Proposal 863
	5	....	.....	New. Proposal 863
	6	....	.....	New. Proposal 863
	7	5	5 . . . . .	Amended. Proposal 857
	8	....	.....	New. Proposal 863
7	1	....	.....	New. Proposal 852
	2	7	7 pt. (as am'd 1913) .	Amended. Proposal 852
	3	7	7 pt. . . . .	Proposal 852
	4	....	.....	New. Proposal 852
	5	....	.....	New. Proposal 852
	6	7	7 pt. . . . .	Proposal 852
8	1	6	1 (as am'd 1905) . . .	Amended. Proposal 850
	2	6	2 (as am'd 1905) . . .	Amended. Proposal 850
	3	....	.....	New. Proposal 850
	4	6	3 . . . . .	Amended. Proposal 850
	5	6	4 . . . . .	Amended. Proposal 850
	6	....	.....	New. Proposal 850
	7	....	.....	New. Proposal 850
	8	....	.....	New. Proposal 850
	9	6	7 (as am'd 1899) . . .	Amended. Proposal 850
	10	6	8 . . . . .	Amended. Proposal 850
	11	6	9 . . . . .	Amended. Proposal 850
	12	6	10 . . . . .	Amended. Proposal 850
	13	6	11 . . . . .	Amended. Proposal 850
	14	6	12 (as am'd 1909) . . .	Amended. Proposal 850
	15	6	13 . . . . .	Amended. Proposal 850
	16	6	14 (as am'd 1913) . . .	Amended. Proposal 850
	17	6	15 . . . . .	Amended. Proposal 850
	18	6	16 . . . . .	Amended. Proposal 850
	19	6	17 . . . . .	Amended. Proposal 850

**SCHEDULE C** (*Continued*)  
**SOURCES OF SECTIONS OF CONSTITUTION OF 1915**

CONSTITUTION OF 1915		CONSTITUTION OF 1894		
Article	Section	Article	Section	Proposal
8	20	....	.....	New. Proposal 850
	21	....	.....	New. Proposal 850
	22	6	18.....	Amended. Proposal 850
	23	6	19.....	Amended. Proposal 850
	24	6	20.....	Amended. Proposal 850
	25	6	21.....	Amended. Proposal 850
	26	6	22.....	Amended. Proposal 850
	27	6	23.....	Amended. Proposal 850
	28	....	.....	New. Proposal 850
	29	....	.....	New. Proposal 850
9	1	7	1.....	Amended. Proposal 784
	2	7	2.....	
	3	7	3.....	
	4	7	4 (as am'd 1909) . . .	
	5	7	5.....	
	6	7	11 (added 1905).....	
	7	7	12 (added 1905).....	
	8	....	.....	
	9	7	6.....	
	10	7	8.....	
	11	7	9.....	
	12	7	10.....	
10	1	....	.....	New. Proposal 834
	2	....	.....	New. Proposal 834
	3	....	.....	New. Proposal 834
11	1	8	1.....	Amended. Proposal 862 Amended. Proposal 862 New. Proposal 862 Amended. Proposal 827
	2	8	2.....	
	3	8	3.....	
	4	8	4.....	
	5	8	5.....	
	6	8	6.....	
	7	8	7.....	
	8	8	8.....	
	9	8	9.....	
	10	8	10 pt. (as am'd 1909) .	
	11	8	10 pt. ....	
	12	....	.....	
	13	8	11.....	
	14	8	12.....	
	15	8	13.....	
	16	8	14.....	
	17	8	15.....	
12	1	9	1.....	
	2	9	2.....	
	3	9	3.....	
	4	9	4.....	

**SCHEDULE C** (*Concluded*)  
SOURCES OF SECTIONS OF CONSTITUTION OF 1915

CONSTITUTION OF 1915		CONSTITUTION OF 1894		
Article	Section	Article	Section	Proposal
13	1	10	1.....	Amended. Proposal 853
	2	10	2.....	
	3	10	3.....	
	4	10	4.....	
	5	10	5.....	
	6	10	7.....	
	7	10	8.....	
	8	10	9.....	
	9	5	8.....	
	10	5	9.....	
14	1	11	1.....	Amended. Proposal 761 Amended. Proposal 794 Amended. Proposal 764
	2	11	2.....	
	3	11	3.....	
	4	11	4.....	
	5	11	5.....	
	6	11	6.....	
15	1	12	1 pt (as am'd 1905).....	Amended. Proposal 851
	2	12	1 pt.....	Amended. Proposal 851
	3	.....	.....	New. Proposal 851
	4	12	2 (as am'd 1907).....	Amended. Proposal 851
	5	12	3.....	Amended. Proposal 851
16	1	13	1.....	
	2	13	2.....	
	3	13	3.....	
	4	13	4.....	
	5	13	5.....	
	6	13	6.....	
17	1	14	1.....	Amended. Proposal 855
	2	14	2.....	Amended. Proposal 855
	3	.....	.....	New. Proposal 855
	4	14	3.....	Amended. Proposal 855
18	1	15	1.....	Amended. Proposal 145

Respectfully submitted,

ADOLPH J. RODENBECK,  
*Chairman.*

LEMUEL E. QUIGG,  
WILLIAM S. OSTRANDER,  
CHARLES H. BETTS,  
WILLIAM R. BAYES,  
HARRY W. NEWBURGER,  
TIMOTHY A. LEARY.

September 9, 1915.

*Committee.*



STATE OF NEW YORK

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# IN CONVENTION

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## DOCUMENT

No. 53

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### REPORT OF SPECIAL COMMITTEE ON THE TIME AND MANNER OF SUBMISSION OF THE REVISED CONSTITUTION

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The Special Committee on the Time and Manner of Submission of the Revised Constitution respectfully report the annexed resolution, and recommend its adoption.

HERBERT PARSONS, *Chairman*,  
ELIHU ROOT, *ex officio*,  
JACOB BRENNER,  
D. R. COBB,  
FRANK L. YOUNG,  
DELANCEY NICOLL.

Dated, Albany, September 10, 1915.



## REPORT

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*Resolved*, That the Revised Constitution adopted by this Convention be submitted to the people for their adoption or rejection at the general election to be held on the 2d day of November, one thousand nine hundred and fifteen, in the manner following, that is to say:

The submission shall be in three separate propositions as follows:

*First* — All of the Revised Constitution not included in the following two propositions.

*Second* — The proposed amendments to sections 2, 3, 4 and 5 of Article III relating to legislative apportionment.

*Third* — The proposed new Article X relating to taxation.

There shall be a separate ballot box at each polling place for the reception of the ballots on said propositions.

Official ballots shall be provided at the public expense at each polling place. They shall be endorsed on the back with the words "Revised Constitution Ballot." On the back of each voting section shall be printed the number of the question which it contains. Except as herein provided the ballots shall be in the form prescribed by the Election Law for proposed constitutional amendments and questions submitted. There shall be printed upon the face of each of such official ballots three questions in the following words, that is to say:

### " QUESTION NO. 1

#### Revised Constitution

Shall all of the Revised Constitution submitted by the Constitutional Convention not included in Questions 2 and 3 be approved?

### QUESTION NO. 2

#### Legislative Apportionment

Shall the proposed amendments submitted by the Constitutional Convention to Sections 2, 3, 4 and 5 of Article III relating to legislative apportionment be approved?

**QUESTION NO. 3****Taxation**

Shall the new Article X submitted by the Constitutional Convention relating to taxation be approved?"

At the left of each question shall appear two voting squares, one above the other, each at least one-half inch square. At the left of the upper square shall be printed the word "Yes", and at the left of the lower square shall be printed the word "No". On the stub at the top of the ballot shall be printed the instructions to the voter prescribed by Section 332 of the Election Law as follows:

**"INSTRUCTIONS TO VOTER:**

1. To vote 'Yes' on any question make a cross X mark in the square opposite the word 'Yes'.
2. To vote 'No' make a cross X mark in the square opposite the word 'No'.
3. Mark only with a pencil having black lead.
4. Any other mark, erasure or tear on the ballot renders it void.
5. If you tear, or deface, or wrongly mark this ballot, return it and obtain another."

If a majority of the electors voting on

**"QUESTION NO. 1****Revised Constitution**

Shall all of the Revised Constitution submitted by the Constitutional Convention not included in Questions 2 and 3 be approved?"

shall make a cross mark in the square opposite the word "Yes" then the proposed Revised Constitution shall be the Constitution of the State of New York, except as the same may be modified by the result of the vote upon the second and third questions above specified.

If a majority of the electors voting on

**“ QUESTION NO. 1**

**Revised Constitution**

Shall all of the Revised Constitution submitted by the Constitutional Convention not included in Questions 2 and 3 be approved? ”

shall make a cross mark in the square opposite the word “ No ” then all of the Revised Constitution submitted by Question No. 1 shall be declared rejected, and the present Constitution shall remain in force except as the same may be modified by the result of the votes upon the second and third questions above specified.

If a majority of the electors voting on

**“ QUESTION NO. 2**

**Legislative Apportionment**

Shall the proposed amendments to Sections 2, 3, 4 and 5 of Article III relating to legislative apportionment be approved? ”

shall make a cross mark in the square opposite the word “ Yes ”, then the amended sections therein described shall be Sections 2, 3, 4 and 5 of Article III of the Constitution.

If a majority of the electors voting on

**“ QUESTION NO. 2**

**Legislative Apportionment**

Shall the proposed amendments to Sections 2, 3, 4 and 5 of Article III relating to legislative apportionment be approved? ”

shall make a cross mark in the square opposite the word “ No ”, then the said amendments shall be declared rejected, and Sections 2, 3, 4 and 5 of Article III of the present Constitution shall remain in force and effect.

If a majority of the electors voting on

**“ QUESTION NO. 3**

**Taxation**

Shall the proposed new Article X relating to taxation be approved ? ”

shall make a cross mark in the square opposite the word “ Yes ”, then the proposed amendment shall be Article X of the Revised Constitution, provided, however, that if that part of the Revised Constitution submitted by Question No. 1 be rejected, then the said proposed amendment shall be Article VIIa of the Constitution, and the reference in Section 2 thereof to Section 2 of Article XIII shall be deemed to refer to Section 2 of Article X of the present Constitution, and the said Article VIIa shall be deemed to be amended accordingly.

If a majority of the electors voting on

**“ QUESTION NO. 3**

**Taxation**

“ Shall the proposed new Article X relating to taxation be approved ? ”

shall make a cross mark in the square opposite the word “ No ”, then the said amendment shall be declared rejected, and if that part of the Revised Constitution submitted by Question No. 1 be approved, Articles XI, XII, XIII, XIV, XV, XVI, XVII and XVIII of the Revised Constitution shall be Articles X, XI, XII, XIII, XIV, XV, XVI and XVII thereof respectively.

Chapter 668 of the Laws of 1915 relating to the notice, distribution and publication of amendments to the Constitution submitted by the Constitutional Convention to the people for approval at the general election of 1915, is hereby approved and made the act of this Convention, and the Secretary of State, the Attorney-General and all other officers mentioned in said act are hereby authorized and directed to comply with the provisions thereof.

But no failure of notice, distribution or publication as therein provided shall invalidate or affect the submission of the said propo-

sitions to the people as hereinbefore prescribed or the results of their action thereon.

The provisions of the Election Law in regard to the counting and canvassing of votes on proposed constitutional amendments and questions submitted shall apply to the counting and canvassing of votes on the questions above specified except as herein otherwise provided.

The determination whether any of the three questions has received the number of votes requisite for the adoption thereof may be contested in the Supreme Court by any elector in an action in equity brought within three months after such election against the Secretary of State and the judgment rendered shall be reviewable by the Court of Appeals.





# IN CONVENTION

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## DOCUMENT

No. 54

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### REPORT OF SPECIAL COMMITTEE TO PREPARE AND REPORT A FORM OF ADDRESS TO THE PEOPLE

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#### *To the Convention:*

The Committee appointed pursuant to resolution adopted on September 3, 1915, to prepare and report to the Convention a form of address to the people of the State, beg leave to report the annexed proposed address and to recommend its adoption by the Convention.

GEO. W. WICKERSHAM,  
*Chairman.*

SETH LOW,  
A. T. CLEARWATER,  
J. G. SCHURMAN,  
MORGAN J. O'BRIEN,  
LEDYARD P. HALE.

Dated, Albany, September 10, 1915.



## ADDRESS TO THE PEOPLE OF THE STATE OF NEW YORK

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The Delegates of the People of the State of New York in Convention Assembled to revise and amend the Constitution of the State present to the People a revised Constitution of eighteen articles.

We have, in the revised Constitution submitted, retained the general framework of the existing Constitution, and have recommended such modifications as in our opinion are essential to the improvement of the government of the State and to remedy the most striking deficiencies of the existing system.

Besides striking out the obsolete matter, we have considered upwards of 800 amendments proposed, and have adopted 33. The most important of the amendments proposed deal with:

1. The reorganization of the State government on its administrative side into seventeen civil departments, a reduction in the number of elected officers, and provisions for the appointment of all other officers.

2. Provisions affecting the Legislature, designed to remove from it the consideration of local matters and private claims, and to restore it to its true function of enacting laws of general application and of making necessary appropriations for the conduct of the State government.

3. A careful regulation of and change in the method of making appropriations for the expenses of the State, by means of an annual executive budget.

4. Improvements in the method of contracting indebtedness for the purposes of the State, and the substitution of serial for sinking fund bonds.

5. The grant to cities of as large a control of their own municipal government and affairs as is consistent with State sovereignty.

6. Authority in the Legislature, with the approval of the electors of such county, to provide for any county optional forms of government and prohibiting the passage of local or special laws relating to a county, except at the instance of its local authorities.

7. Reform in civil procedure in the courts of the State, and provisions affecting the organization and jurisdiction of the courts, designed to prevent delays in the administration of justice and to simplify litigation and make it less expensive.

8. State control over the assessment of taxes on personal and intangible property.

9. The protection of the natural resources of the State under a conservation commission.

10. Provisions for the benefit of wage earners by creating a department of labor and industry, by extending the benefits of the Workmen's Compensation Act to embrace occupational diseases, and by empowering the Legislature to regulate or prohibit manufacturing in tenement houses.

A number of other matters of only less importance than those above referred to also have been embodied in the proposed amendments.

I. The modifications we recommend in the organization of the executive department present to the people a plan for ending the present unsystematic, wasteful and irresponsible State government, under which its executive and administrative agencies are distributed among more than one hundred and fifty bureaus, departments, commissions, boards and officials. Many of these involve duplication of the work of others. We substitute for them a concentration of all such activities into seventeen departments. Of these, two, namely, the Departments of Law and Finance, are to be administered by the Attorney-General and the Comptroller, respectively; four, namely, the Departments of Labor and Industry, Public Utilities, Conservation, and Civil Service, are under the direction of commissions composed of one or more commissioners appointed for terms extending beyond that of the Governor. They are vested with both legislative and administrative functions. For these reasons, the con-

sent of the Senate is required to their appointment by the Governor, and they are made removable by the Governor only for cause and after an opportunity to be heard. The Department of Education is continued under the administration of the University of the State of New York, with powers to be exercised by regents chosen by the two houses of the Legislature voting jointly for terms of nine years, one of them expiring each year. Each of the remaining ten departments is placed under the direction of a responsible head appointed and removable by the Governor.

We have applied the principle of the short ballot, by taking the Secretary of State and the State Treasurer out of the class of elective officials, and abolishing the office of State Engineer and Surveyor and transferring his duties to the Department of Public Works, the head of which is to be appointed by the Governor. The elected State officials will thus be the Governor and Lieutenant-Governor, Attorney-General and the Comptroller, all for the term of two years.

We have provided that at the session immediately following the adoption of the Constitution, the Legislature shall provide by law for the appropriate assignment to and among these seventeen several departments, of all the civil administrative and executive functions of the State government, except those of assistants in the office of the Governor; that no new department shall hereafter be created, and that any bureau, board, commission or office hereafter created, except assistants in the office of the Governor, shall be placed in one of the departments so enumerated.

The elective State officials in office at the time the new Constitution takes effect are to continue in office until the end of their respective terms.

II. We have extended the classes of private or local bills which the Legislature is prohibited from passing so as to embrace bills granting to any corporation, association or individual the right to prove a claim against the State, or against any civil division thereof, and bills authorizing any civil division of the State to allow or pay any claim or account. We have forbidden the Legislature to audit or allow any private claim or account against the State or a civil division thereof, while authorizing it to pay such claims and accounts against the State as shall have been audited and allowed according to law. We have provided that no

public moneys or property shall be appropriated for the construction or improvement of any building, bridge, dike, canal, feeder, waterway, or other work, until plans and estimates of the cost of such work shall have been filed with the Secretary of State by the Superintendent of Public Works, together with a certificate by him as to whether or not in his judgment the general interests of the State then require that such improvements be made at State expense.

We have abolished the provisions for emergency messages by the Governor, and have required that no bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage.

We have required each house of the Legislature not only to keep a complete journal of its proceedings, but also a record of its debates, and promptly to publish the same from day to day.

The salary of members of the Legislature was fixed at \$1,500 per annum in 1875. In view of the changes in the value of money and the largely increased cost of living during the forty years since that date, we have increased that compensation to \$2,500 a year, besides the actual railroad fare of the members paid in going to and returning from their homes not oftener than once a week during the session of the Legislature. An additional reason for this increase was furnished by the argument, earnestly pressed upon us, that many competent and desirable citizens cannot afford to become members of the Legislature at the present rate of compensation. We have also increased the salary of the Governor, after January 1, 1917, to \$20,000 a year, as more suitable to the dignity and responsibility of the office of Chief Executive of the State.

III. We have proposed a radical change in the method of providing for the necessary expenditures of the State. Instead of leaving the Legislature to make appropriations without any comprehensive and systematic study of the needs of the various departments of the State government, and the sources of its revenue, leaving to the Governor the power and duty after the adjournment of the Legislature to go over the appropriation bills and cut out items which appear to him to be unnecessary or improper, we have sought to restore the true American ideal which accords with the

genius and history of our institutions, by requiring the preparation by the heads of departments in advance of each legislative session of itemized estimates of appropriations to meet the financial needs of each department for the ensuing year, and the preparation by the Governor, after public hearing, for submission to the Legislature, of a complete budget or plan of proposed expenditures and estimated revenues. We give to the Governor and the heads of the departments the right to appear before the Legislature and be heard respecting the budget, and make it their duty so to appear if requested by either house. We give to the Legislature the power to reduce or eliminate, but not to increase any item in such proposed budget. The appropriation bills enacted after this procedure are to become laws without the Governor's approval. Appropriations for the expenses of the judiciary and the Legislature are left subject to the Governor's veto power as at present. We have sought by these provisions to substitute responsible for irresponsible government; appropriations based upon thorough investigation, comprehensive information, and in the light of informed public discussion followed by deliberate action in the early period of the legislative session, for the present complex, irresponsible system of legislation, often by secret conference in committee and hurried enactment with the aid of emergency messages in the closing hours of the session. We believe that these provisions must lead to the elimination of many useless or improvident expenditures, and result in a greater economy in the administration of the State finances.

IV. We have also recommended provisions changing the present cumbersome, uncertain and costly system of providing sinking funds for the retirement of bonds issued by the State, by requiring all bonds of the State to be issued in serials not extending beyond the estimated life of the work or improvement for which the debt is contracted, payable in equal annual installments, and therefore requiring no sinking funds.

V. We have proposed as large a measure of Home Rule for the cities of the State as is consistent with the recognition and retention of the sovereignty of the State. We provide that every city shall have the exclusive power to manage, regulate and control its own property, affairs and municipal government. Such power shall include, among others, the right to organize

and manage the departments of the city government, and to regulate the compensation and method of removal of all city officers and employees, thus enabling them to obtain what is just and fair, both for themselves and the taxpayers, without the necessity in the first instance of application to the State Legislature. As a last resort, or as a matter of State policy, the Legislature retains power to redress just grievances by the enactment of laws applicable to all the cities of the State without classification or distinction. We make it the duty of the Legislature by general laws to provide for the organization of new cities in such manner as to secure to them the exercise of powers thus granted. We provide a method for the adoption by existing cities of new charters for the exercise of such powers, which charters must be submitted to the Legislature and become effective if not disapproved by it. Among the powers so granted is that of adopting amendments to charters; but amendments which change the framework of the city government, or modify restrictions as to issuing bonds or contracting debts, must be submitted to the Legislature, and shall take effect as law sixty days after such submission, unless in the mean time the Legislature shall disapprove the same by joint resolution. We prohibit the Legislature from passing any law relating to the property, affairs or municipal government of a city, except such as is applicable to all the cities of the State without classification or distinction, and we empower the Legislature to delegate to the cities, for exercise within their respective local jurisdictions, such of its powers of legislation as to matters of State concern as it may from time to time deem expedient. We also require the Legislature to provide for the method and limitations under which debts may be contracted by the cities, counties, towns, villages and other civil divisions of the State, to the end that such debts shall be payable in annual instalments, the last of which shall fall due and be paid within fifty years after such debts shall have been contracted, and in no event for a period longer than the probable life of the work or object for which it is to be contracted.

VI. We authorize the Legislature by general law to establish different forms of government for any county not wholly included within a city, to become effective only when approved by the electors of the county, and to confer upon any elective or appoint-



ive county officer or officers any of the powers and duties now exercised by the towns in any county, or by any officer of a town, relating to highways, public safety and the care of the poor. We have provided that no local or special law relating to a county or counties, except those wholly included within a city, shall be enacted, except upon request by resolution of the governing body of the county or counties to be affected. We have also authorized the Legislature by general laws to confer upon the boards of supervisors or other governing bodies of the several counties of the State such further powers of local legislation and administration as the legislature may from time to time deem expedient.

VII. We have sought to remove the basis for complaints of delays and undue expense in the administration of justice, by amendments dealing with (1) rules of procedure, and (2) the organization and jurisdiction of courts and judges. As to the first, we require the Legislature to enact at its next session a short and simple civil practice act which it may not alter or amend, unless at the request of the judges empowered to frame civil practice rules, except at intervals of five years, and then only after report by a commission appointed to consider the subject. We give to the judges of the Court of Appeals and Supreme Court exclusive power to make rules of court to regulate details of civil practice. By these provisions we not only do away with the confused and complicated mass of statutes which constitute the Code of Civil Procedure, but we substitute for a rigid statutory regulation of practice rules of court made to facilitate the progress of litigation without undue technicalities and delays. (2) We recommend an increase in the number of justices composing the Appellate Division of the Supreme Court in the first department from seven to not less than ten nor more than twelve, and in the second department from five to seven. To supply this enlarged force, provision is made for the election of two new justices in the first district. In 1914, the Appellate Division in the first department disposed of 1,500 appeals and 840 motions, more than double that of any other court in the State, except the Appellate Division in the second department, which in 1914 decided about 70 per cent. of that number. The changes in organization and increase in the number of justices recommended is essential to cope with this great volume of business.

The number of cases undisposed of in the Court of Appeals has been steadily increasing. It requires more than two years after appeal taken to that court before a case not entitled to preference can be reached for argument. There are now more than 600 cases pending before it. We recommend that the number of permanently elected judges be increased to ten, and that the three Supreme Court justices now sitting in the Court of Appeals by designation of the Governor be continued as associate judges of the court until the expiration of their respective terms, after which their successors shall be elected as associate judges of the Court of Appeals. For the purpose of disposing of the present accumulation of business, we require the Court of Appeals within three months after the Constitution takes effect, to designate for temporary service in that court not less than four nor more than six justices of the Supreme Court, and thereupon to divide the Court of Appeals into two parts each of seven judges, each part having equal jurisdiction to hear and dispose of the cases which shall be distributed between them by the chief judge. When the accumulation of cases has been reduced to 100, but not later than December 31, 1917, the Supreme Court justices are to return to their court and the Court of Appeals is then to resume its normal condition as a single court. Similar provisions are made to deal with accumulations of cases in the future.

In order to facilitate impeachment of officers of the State in proper cases, we have provided that the Legislature, of its own motion, may convene to take action in the matter of the removal of a judge of the Court of Appeals or justice of the Supreme Court; that the Assembly, of its own motion, may convene for the purposes of impeachment, and that the court for the trial of impeachments may order all or any part of the testimony in any case to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court if he so desire. Applying the principle that no man shall serve as judge in a cause in the outcome of which he has a personal interest, we provide that on the trial of an impeachment of the Governor or Lieutenant-Governor, neither the Lieutenant-Governor nor the Temporary President of the Senate shall act as a member of the court.

We have provided for the appointment by the Appellate Divisions in the first and second departments of Supreme Court Commissioners to act as referees or to determine the compensation to be paid when private property is taken for a public use, and to perform such other duties as may be devolved upon them by special order, rule of court or the civil practice rules.

We have increased the jurisdiction of county courts in common law actions for the recovery of money only from \$2,000 to \$3,000, and we have authorized the Legislature to confer upon them jurisdiction over actions against non-residents having an office for the regular transaction of business within the county when the cause of action arises within the county.

Recognizing the greatly increased efficiency which has been realized by the consolidation of numerous small courts into single tribunals so organized that their entire judicial force may be kept occupied by the distribution of the business within the jurisdiction of the court among its various terms and parts, we have provided for the extension from and after January 1, 1917, over the whole city of New York, of the jurisdiction of the Court of General Sessions in and for the city and county of New York, the abolition of the county courts of Kings, Queens, Richmond and Bronx and the transfer to the Court of General Sessions of the criminal jurisdiction of those courts. We have also provided for the extension from and after January 1, 1917, over the whole city of the jurisdiction of the City Court of the city of New York, the transfer to it of the civil jurisdiction of the county courts of Kings, Queens, Richmond and Bronx, and the increase of its jurisdiction in common law actions for the recovery of money only to \$3,000.

In order to obviate delays in criminal cases we have authorized the Legislature to confer upon any inferior local court power to try without a jury offenses of the grade of misdemeanor. We have provided that any person may, in the manner prescribed by law, after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years imprisonment, or of an indictable misdemeanor, all subsequent proceedings being had by information before a superior court of criminal jurisdic-

tion, or a judge or justice thereof. This will remove a source of serious complaint in those counties where there is sometimes a period of three and four months between grand juries, so that a person charged with crime, even if willing to plead guilty, must be held on bail, or kept in prison, until the next session of the grand jury, in order that the formality of indictment may be observed before his plea can be received. We have provided that in any criminal case the party accused shall have the right to at least one appeal. We have also provided that every person shall be entitled to the equal protection of the laws.

To enable the Legislature to deal with delinquent children, not as criminals, but as wards of the State, and to regulate domestic relations on a broader basis than the mere enforcement of penal laws, we have empowered the Legislature to establish children's courts and courts of domestic relations, as separate courts or parts of existing courts or courts hereafter created, and to confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment of adults responsible therefor, and of all persons legally chargeable with the support of wife or children who have abandoned or neglected to support either.

To prevent the constant partisan political legislation affecting the court of claims, we have continued that court as a constitutional tribunal, with appropriate jurisdiction for the hearing and determination of claims against the State.

VIII. We recommend the adoption of a new article respecting taxation, which empowers the Legislature to prescribe how taxable subjects shall be assessed, and to provide for officers to execute laws relating to the assessment and collection of taxes, and for the supervision, review and equalization of assessments. We provide that the power of taxation shall never be surrendered, suspended or contracted away, except as to securities of the State or a civil division thereof, and that hereafter no exemption from taxation shall be granted, except by general laws and upon an affirmative vote of two-thirds of all the members elected to each house.

We recommend provisions under which the Legislature for the assessment of real property heretofore locally assessed may, with

the approval of the electors, establish tax districts embracing one county or any part thereof, and make the assessment roll for such district serve for all the lesser tax districts within its boundaries, thus providing a uniform rule of assessment for all purposes throughout the county or district.

IX. We have provided for a department of conservation, to consist of nine commissioners to serve without compensation and to be appointed for terms to expire in nine successive years, their successors to be appointed for terms of nine years each, one of whom shall reside in each judicial district. This department is charged with the development and protection of the natural resources of the State, the encouragement of forestry and the suppression of forest fires throughout the State, the exclusive care, maintenance and administration of the forest preserve, the conservation, prevention of pollution and regulation of the waters of the State, the protection and propagation of its fish, birds, game, shell-fish and crustacea, except migratory fish of the sea within the limits of the marine district. We continue the provision that the forest preserve shall be forever kept as wild forest lands. We require the Legislature annually to make provision for the purchase of real property within the Adirondack and Catskill parks, the reforestation of lands and the making of boundary and valuation surveys, and we provide that the violation of any of the provisions of the article dealing with conservation may be restrained at the suit of the people, or of any citizen.

X. We have recognized the needs of the wage earning class of our people; (1) by creating the Department of Labor and Industry as one of the civil departments of the State government, at the head of which is to be an Industrial Commission or Commissioner as may be provided by law; (2) by including in the amended constitution the provisions of the Workmen's Compensation amendment adopted in 1913, and extending its provisions so as to embrace compensation for injury or death resulting from occupational diseases of employees, and (3) by conferring upon the Legislature power to regulate or prohibit manufacturing in tenement houses.

XI. We have extended the existing constitutional prohibition against the sale, lease or other disposition of the Erie and other

canals so as to embrace canal terminals heretofore or hereafter constructed, and we have provided that the abandonment, sale or other disposition of canals or canal property which shall cease to be a portion of the canal system of the State, shall be only under and pursuant to general laws which shall secure to the State a fair appraised value of the property abandoned or sold. We provide that the Legislature by general, not special laws, may provide for the lease of surplus waters of the State canals.

XII. We have continued with but slight changes the provisions of the existing Constitution respecting the composition of the Senate and Assembly, and the reapportionment of their members according to the number of inhabitants of the State, exclusive of aliens. We provide that such reapportionment, after the year 1916, shall be based upon the Federal census, unless the same shall not be available; and, in conformity with the home rule principle in its application to counties, we provide that in any city embracing an entire county, or more than one county, and having no board of supervisors, the members elected from such county to the board of aldermen, or other body most nearly exercising the powers of the board of aldermen, shall meet and divide such county into assembly districts according to the rule prescribed by the Constitution.

XIII. We leave unchanged the provisions in the present Constitution requiring the State to provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated, and forbidding the use of the property, credit or money of the State directly or indirectly for the aid or maintenance of any school or institution wholly or in part under the control or direction of any religious denomination.

XIV. We have not deemed it expedient to recommend provisions making more difficult the adoption of amendments to the Constitution; but in order that the attention of the public may be directed to any attempts at amendment, we have provided that in case any proposed amendment to the Constitution shall be adopted by either house of the Legislature, on the first Tuesday following such adoption, the two houses shall convene in joint session for the consideration thereof, and that thereafter the proposal shall be considered and acted upon by the two houses separately, and that such

proposal shall not be passed until after it shall have been printed and upon the desks of the members in its final form for at least five calendar legislative days prior to final action.

XV. Other provisions not herein specifically enumerated have been adopted by us as desirable amendments to the existing Constitution. We earnestly recommend all of these proposals to the favorable consideration of the electors of the State, believing that their adoption will result in a very great improvement in the government of the State and its civil divisions, and thus promote the welfare of all of its inhabitants.

Adopted in Convention, September 10, 1915.

ELIHU ROOT,

*President and Delegate at Large.*

WILLIAM D. CUNNINGHAM,

*Secretary.*





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